TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 992.

WILLIAM S. ROBERTS, APPELLANT,

vs.

PHILIP REILLY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED SEPTEMBER 30, 1885.

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1 At a stated term of the fifth circuit court of the United States (for the eastern division, southern district of Georgia), begun and holden in the United States court-room, in the city of Savannah, on the second Monday in April, A. D. 1885, the following, among other proceedings, were had:

Habeas Corpus.

UNITED STATES *ex rel.* WILLIAM S. ROBERTS *vs.* PHILIP REILLY.

Be it remembered that heretofore, to wit, on the 16th day of May, A. D. 1885, came the relator, William S. Roberts, by his attorneys, Hook & Montgomery, and filed in the clerk's office of the said circuit court a transcript of a record on appeal from the district court of the United States for the eastern division, southern district of Georgia, in the words and figures following, to wit:

Transcript from the District Court.

In the District Court of the United States for the Eastern Division, Southern District of Georgia.

In re WILLIAM S. ROBERTS.

Petition for habeas corpus and proceedings thereon.

Be it remembered that heretofore, to wit, on the 30th day of April, A. D. 1885, came William S. Roberts by his attorneys, J. C. C. Black, James S. Hook, H. D. D. Twiggs, & Montgomery, and presented to the judge of the district court of the United States for the southern district of Georgia his petition for writ of habeas corpus in the words and figures following, to wit:

Petition.

2 UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

To the Honorable Emory Speer, judge of the United States district court for the southern district of Georgia and of the eastern division of said southern district:

The petition of William S. Roberts respectfully showeth that he is now, and has been since Sunday, the 26th day of April last past, under arrest, restrained of his liberty, by and in the custody of one Philip Reilly, in the said eastern division of the southern district of Georgia, and at the date of signing this petition in the city of Augusta, in said district and division; that the said Philip Reilly, in so restraining your petitioner of his liberty and detaining him in custody, claims to be acting as agent of the State of New York, and that as such agent he holds your petitioner under or by color of the authority of the United States, by virtue of an arrest made in pursuance of an executive warrant of the State of Georgia, issued by the Governor of the said State of Georgia, on a requisition from the Governor of the State of New York, alleging that your petitioner

has been indicted in the State of New York, and charging your petitioner with being a fugitive from justice.

And your petitioner would further show that in being so restrained of his liberty, and being so detained in custody, he is unlawfully deprived of his liberty and unlawfully detained in custody—

1st. Because he has not been furnished with a duly authenticated copy of the indictment on which it is alleged in said executive warrant said requisition was made by the Governor of New York on the Governor of Georgia.

2nd. Because it appears from the face of said executive warrant that the copy of the indictment accompanying said requisition has not been duly and legally authenticated.

3rd. Because it is not true, in fact, that your petitioner is a fugitive from justice.

3 4th. Because it does not appear from said warrant when said indictment was found.

5th. Because it does not appear from said warrant where said indictment was found.

6th. Because it does not appear from said executive warrant that the said Governor of New York produced to the Governor of the said State of Georgia a copy of an indictment found charging your petitioner with any crime found.

Whereupon your petitioner prays — honor to issue the writ of *habeas corpus ad subjiciendum*, that your petitioner, together with the cause of his arrest, detention, and his being in custody as charged, may be brought before your honor, to the end that whatever appertains to justice may be done, and your petitioner will ever pray.

April 29th, 1885.

WM. S. ROBERTS.

STATE OF GEORGIA, *Richmond County:*

Personally appeared William S. Roberts, who, being duly sworn, deposes and says: That the foregoing petition is true.

WM. S. ROBERTS.

Sworn to before me, this 29th day of April, 1885.

SAML. LEVY,
United States C. C. Commissioner, Southern Dist. of Georgia.

Endorsement: Southern district of Georgia. *In re* Wm. S. Roberts. *Habeas corpus.* Filed in office April 30th, 1885. H. H. King, dep. clerk, U. S. dist. court.

Whereupon the writ of *habeas corpus* was issued in the words and figures following, to wit:

Writ.

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division of said District:

4 To Philip Reilly:

You are hereby commanded to produce the body of Wili-

iam S. Roberts, alleged to be illegally detained by you, together with the cause of his detention, before me Saturday, 2nd of May, 1885, at the U. S. court-room, Savannah, Georgia, then and there to be disposed of as the law directs.

Given under my hand and official signature this the 30th day of April, 1885.

EMORY SPEER,
U. S. Judge.

Afterwards, to wit, on the 2nd day of May, 1885, came the United States marshal and filed in the clerk's office of said district court his return to the said writ in the words and figures following, to wit:

Marshal's Return to Writ.

I certify that on the 1st day of May, 1885, at Augusta, Ga., in my district, I personally served a copy of this original petition and order upon Philip Reilly, as within I am commanded.

Dated Savannah, Ga., May 2d, 1885.

E. C. WADE,
U. S. Marshal,
By HARRY PALMER,
Deputy.

Filed May 2d, 1885.

M. ERWIN, *Clerk.*

Afterwards, to wit, on the 2d day of May, 1885, came the said William S. Roberts before the said district judge, and filed with the district clerk his amendment to his petition in the words and figures following, to wit:

Amendment.

In the Southern District of Georgia, Eastern Division of said District.

In Re WM. S. ROBERTS.

Habeas Corpus.

5 And now comes the said William S. Roberts, and, by leave of the court first had, amends said petition, and says that he is restrained of his liberty, in violation of a law of the United States, viz., the act of February 12th, 1793, section 5278 of the Revised Statutes of the United States, in this: that it appears from the record, now here to your honor shown, upon which the executive warrant under which he is now restrained issued, that the crime with which he is charged was committed in the State of Georgia; that the papers accompanying the demand of the Governor of New York are not authenticated, as required by that act; that it nowhere appears that the relator was personally within the limits of the State of New York at the time when said alleged crime is stated to have been committed; that it nowhere appears that any evidence was before the Governor of New York, at the time he issued his demand, that relator was personally within the limits of New York State when the crime is alleged to have been committed.

WM. S. ROBERTS.

Personally appeared Wm. S. Roberts, who on oath says: That to the best of his knowledge and belief the foregoing facts are true.

WM. S. ROBERTS.

Subscribed and sworn to before me, this 2d day of May, 1885.

MARION ERWIN,
Dep. Clerk.

Endorsement: In U. S. district court. *In re* Wm. S. Roberts. *Habeas corpus.* Amendment to petition. Filed May 2d, 1885. M. Erwin, dist. clerk.

Afterwards, to wit, on the 2nd day of May, 1885, came the respondent, Philip Reilly, before the judge of the said district court, and filed with the district clerk his answer to said writ, in the words and figures following, to wit:

6 *Answer.*

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

Pursuant to a writ of *habeas corpus*, issued by the Hon. Emory Speer, judge of the district court of the United States for the southern district of Georgia, served upon me, I herewith produce the body of William S. Roberts, and return as the cause of his detention the executive warrant of the Governor of the State of Georgia, under which he was delivered to me by authority issued to me by Hon. D. B. Hill, Governor of the State of New York, April 22d, 1885, here to the court shown, copy of which is annexed, under which I still hold him, I having, as agent of the State of New York, received said Roberts from Wilberforce Daniel, sheriff of the county of Richmond, to be carried to the State of New York, there to be dealt with according to law; that a certified copy of the indictment found for grand larceny in the State of New York, with evidence of fleeing from justice after commission of the crime, were produced by respondent as received from the Governor of New York and delivered to the Governor of Georgia, and retained in his office at the time of the issuing of the executive warrant under which the said Roberts was placed in possession of the respondent by the sheriff of Richmond county.

I further return that on April 26th, 1885, after the delivery of the said Roberts to me by the sheriff of Richmond county, I was served with a writ of *habeas corpus* issued by the Hon. H. C. Roney, judge of the superior court of the Augusta circuit, of which circuit the county of Richmond is a part, and by his order required to produce the said Roberts before him April 27th, 1885; that from that date until May 1st, 1885, I held the said Roberts subject to the order of the said judge, who at said time remanded him into my custody, a certified copy of which proceedings, with the judgment
7 thereon dismissing the writ and remanding him into my custody, is here to the court shown.

Whereupon this respondent prays that the said writ may be dismissed at the costs of the relator.

PHILIP REILLY.

EASTERN DIVISION, *Southern District of Georgia:*

Philip Reilly, being duly sworn, deposes and says that the facts above stated are correct and true.

PHILIP REILLY.

Sworn to and subscribed before me, this 2nd day of May, 1885.

M. ERWIN,
Dist. Clerk.

Copy of Authority to Philip Reilly.

STATE OF NEW YORK, EXECUTIVE CHAMBER.

David B. Hill, Governor of the State of New York, to all to whom these presents shall come:

Know ye that I have authorized and empowered, and by these presents do authorize and empower, Philip Reilly to take and receive from the proper authorities of the State of Georgia William S. Roberts, fugitive from justice, and convey him, at the exclusive cost of the county of New York, to the State of New York, there to be dealt with according to law.

In witness whereof I have hereunto signed my name and affixed the privy seal of the State, at the city of Albany, this twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-five.

DAVID B. HILL.

[Seal of the State of New York.]

WILLIAM G. RICE,
Private Secretary.

8 Endorsement: In U. S. dist. court. *In re* Wm. S. Roberts. Answer of Philip Reilly. Filed May 2d, 1885. M. Erwin, dep't clerk.

Afterwards, to wit, on the 2nd day of May, 1885, the following proceedings were had before the judge of the said district court.

Habeas Corpus.

In re WILLIAM S. ROBERTS.

This matter came on to be heard on the pleadings and proofs, and counsel desiring further time to be heard the hearing was continued to Monday next.

Order to Hold Prisoner in Custody.

In the District Court of the United States, Eastern Division, Southern District of Georgia.

Habeas Corpus.

In re WILLIAM S. ROBERTS.

Ordered by the court that the said William S. Roberts be held in the custody of the marshal of the court pending the hearing in the above-stated matter.

In open court May 2d, 1885.

EMORY SPEER,
U. S. Judge.

Endorsement: In U. S. district court. *In re* Wm. S. Roberts. *Habeas corpus.* Order for marshal to hold prisoner in custody. Filed May 2d, 1885. Marion Erwin, clerk.

Afterwards, to wit, on Monday, May 4th, 1885, the following proceedings were had before the judge of the said district court:

9 *Habeas Corpus. Order to Remand.*

In Re WILLIAM S. ROBERTS.

This cause came on to be heard on the pleadings and proofs, and after argument heard it is considered, ordered, and adjudged that the writ is disallowed, and the petition of the relator be dismissed, and that he be remanded.

Afterwards, to wit, on the 5th day of May, 1885, the judge of said court made an order allowing an appeal in the words and figurs following, to wit:

Habeas Corpus. Order Allowing Appeal.

In the District Court of the United States for the Southern District of Georgia, Eastern Division.

In Re Petition of WILLIAM S. ROBERTS.

The judge of the district court having rendered a final decision in said case dismissing said writ and remanding said petitioner, and said petioner having prayed that an appeal be taken in his behalf to the next circuit court for said district, in which said cause was heard in accordance with the statute in that behalf enacted, after argument had it is considered and ordered that an appeal be, and the same is hereby, allowed upon the following terms and under the following regulations:

That the said William S. Roberts be taken into the custody of the United States marshal for the said southern district of Georgia, to be by him safely kept, and that the said William S. Roberts do execute and deliver a good and sufficient bond in the sum of ten thousand dollars, with security, to be approved by the judge of said district court, which said bond, when approved, shall be filed with the clerk of said circuit court, and shall be conditioned as follows:

10 That the — William S. Roberts do deliver himself up to the marshal of said southern district, and do appear before the circuit court whenever and wherever ordered by this court, or by the said circuit court, and do then and there abide by and perform the judgment of the circuit court in the premises.

And that the said William S. Roberts do cause to be sent to the said appellate tribunal a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings and documents and affidavits in said cause, immediately on execution of said bond. And that upon the execution and approval of said bond as aforesaid, and the tender of the same, the said William S. Roberts be discharged from the custody of said marshal and allowed to go free,

subject to the terms of this order or the final decision of said appellate court.

In open court, May 5th, 1885.

EMORY SPEER,
U. S. Judge.

Filed May 5th, 1885.

Acknowledgment of Service.

Notice of appeal and service of within order acknowledged and further notice and further service waived.

This May 5th, 1885.

F. H. MILLER,
CHISHOLM & ERWIN,
BOYKIN WRIGHT,
Att'ys for Respondent.

Endorsement: District court of the United States for the southern district of Georgia, *in re.* Petition of W. S. Roberts, *habeas corpus.* Order allowing appeal. Filed May 5th, 1885. M. Erwin, clerk.

11 *Testimony Offered in Evidence by the Relator.*

Transcript from the Governor's Office, State of Georgia.

EXECUTIVE DEPARTMENT, ATLANTA, GA.

STATE OF NEW YORK, EXECUTIVE CHAMBER.

David B. Hill, Governor of the State of New York, to his Excellency, the Governor of the State of Georgia:

Whereas it appears by a copy of an indictment, which I certify to be authentic and duly authenticated, in accordance with the laws of this State, that William S. Roberts stands charged with the crime of grand larceny in the first degree, committed in the county of New York, in this State, and it has been represented to me that he has fled from justice of this State, and may have taken refuge in the State of Georgia, now, therefore, pursuant to the provisions of the Constitution and laws of the United States in such cases made and provided, I do hereby require that the said William S. Roberts be apprehended and delivered to Philip Reilly, who is authorized to receive and convey him to the State of New York, there to be dealt with according to law.

In witness whereof I have hereunto signed my name and affixed the privy seal of the State, at the city of Albany, this twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of the State of New York.]

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,
Private Secretary.

12 DISTRICT ATTORNEY'S OFFICE,
CITY AND COUNTY OF NEW YORK, *April 14th*, 1885.

To his Excellency the Governor:

SIR: In compliance with your regulations, I have the honor to make herewith application for a requisition upon the Governor of the State of Georgia for William S. Roberts and Edward H. Walton, who stand indicted in this county for the crime of grand larceny, and who, as appears from the affidavit of William H. Thurston, herewith submitted, are fugitives from the justice of the State. In support of the application I enclose herewith, in duplicate, certified copies of the indictment against the said William S. Roberts and Edward H. Walton, and affidavits alleging the facts required to be established, and respectfully certify—

1st. That, in my opinion, the ends of public justice require that the said William S. Roberts and Edward H. Walton be brought back to this State for trial at the public expense, and that I am content that such expense be a county charge.

2nd. That I have, as I believe, within my reach and will be able to produce on the trial, evidence sufficient to insure conviction.

3rd. No other application has been made, nor has any requisition been issued, for these persons growing out of the transaction set out in the present indictment.

4th. I believe that the criminals named are not now under arrest in the State of Georgia.

5th. That this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

6th. I am informed and believe that the said William S. Roberts and Edward H. Walton, at the time they fled therefrom, were not residents of this State.

13 I name Philip Reilly and Silas W. Rogers as proper persons to be designated as agents, and certify that they have no private — in the arrest of the fugitives.

I am, sir, very respectfully,

RANDOLPH P. MARTINE,
District Attorney, New York County.

CITY AND COUNTY OF NEW YORK, *ss:*

DISTRICT ATTORNEY'S OFFICE.

William W. Thurston, being duly sworn, deposes and says: That he knows that William S. Roberts and Edward H. Walton were, on the 10th day of April, 1885, duly indicted for the crime of grand larceny; that before being arrested the said William S. Roberts and Edward H. Walton fled from the State of New York, and are now fugitives from justice at Augusta, in the State of Georgia; that deponent's reasons for believing that said William S. Roberts and Edward H. Walton are at present at Augusta, in the State of Georgia, are as follows: That said William S. Roberts and Edward H. Walton are personally known to deponent; that deponent knows, of his

own knowledge, that said Roberts and Walton are now in Augusta, in the State of Georgia, and that deponent further received this day a dispatch from Frank H. Miller, counsellor-at-law at Augusta, State of Georgia, to whom said Roberts and Walton are personally known, stating that said Roberts and Walton are still at Augusta, in the State of Georgia.

WM. W. THURSTON.

Sworn to before me, this 14th day of April, 1885.

WILLIAM N. PENNEY,
Notary Public, New York City and County.

14 STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Patrick Kenan, of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that William N. Penny, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 14th day of April, 1885.

[SEAL.] PATRICK KENAN, *Clerk.*

Court of General Sessions of the place, of the city and county of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
WILLIAM S. ROBERTS AND EDWARD H. WALTON.

CITY AND COUNTY OF NEW YORK, *ss:*

William W. Thurston, being duly sworn, deposes and says: I reside in the borough of South Bethlehem, in the State of Pennsylvania. I am the vice-president of the Bethlehem Iron Company, and the complaining witness in the above-entitled criminal action. The property alleged in the indictment herein to have been stolen by the above-named defendants, is the property of said Iron Company; the application for a requisition for the above-named defendants is not made for the purpose of collecting a debt, or for the purpose of serving any private end, but solely for the purpose of having the said defendants arrested and punished for their crime as the law directs. If the said requisition is granted, it will not be used,
15 directly or indirectly, nor will any attempt be made to use the same for the purpose of collecting a debt, or for any private purpose whatever.

WILLIAM W. THURSTON.

Sworn to before me, this 13th day of April, 1885.

VERNON M. DAVIS,
Notary Public, N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the city and county of New York, and also a clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Vernon M. Davis, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court of said State, and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 14th day of April, 1885.

[SEAL.] PATRICK KEENAN, *Clerk.*

In the Matter of the Application of THE BETHLEHEM IRON CO. for Indictments

against

WILLIAM S. ROBERTS and EDWARD H. WALTON.

CITY AND COUNTY OF NEW YORK, *ss:*

William W. Thurston, being duly sworn, saith: I am the vice president of the Bethlehem Iron Co.; that on the 21st day of April, 1883, the Bethlehem Iron Company caused to be deposited with William S. Roberts, president of the Bank of Augusta, eighty-two bonds of the Georgetown and Lane's railroad of the par value of $1,000 each, and of the actual value of not less than five hundred dollars each, said bonds being numbered from No. 1 to 82, both inclusive, said deposit being evidenced by the following receipt now in possession of complainant and ready to be produced:

AUGUSTA, GA., *April 21st*, 1883.

Received from E. H. Walton, for account Bethlehem Iron Company, eighty-two bonds Georgetown and Lane's Railroad Company, one thousand dollars each, numbered from 1 to 82, both numbers included, to be held subject to their order.

WM. S. ROBERTS, *President.*

That thereafter, on the 28th day of September, 1883, a farther deposit of $10,000, par value of said bonds was made, and on the 27th of September, 1883, a farther deposit of $13,000, par value of said bonds, was made; on the 13th day of October, 1883, a farther deposit of $15,000 of said bonds was made; on the 20th October, 1883, a farther deposit of $7,000 of said bonds was made; on the 24th October, 1883, a farther deposit of $15,000 of said bonds was made; on the 30th October, 1883, a farther deposit of $3,000 of said bonds was made, all of which deposits were evidenced by receipts similar in tenor and effect to that above set forth, and were all signed by the said Edward H. Walton, the total amount of said bonds so deposited being $145,000, par value.

That prior to the 28th day of January, 1885, I went to Augusta,

Ga., for the purpose of taking possession of said bonds so held by the said bank, and on the 28th day of January, 1885, I made a demand on the said Roberts and Walton for the delivery of said special deposit. The said demand was refused, and said Roberts and Walton replied that they did not have possession of any of the said bonds, but that they were all in the city of New York, where Mr. Roberts had taken them. The said Roberts and Walton also stated that said Roberts had, on or about the month of December,
17 1883, and at other times thereafter, taken the said bonds so belonging to this complainant to the city of New York, and had pledged $4,000, par value thereof, with the Mercantile National Bank of the city of New York, as collateral security for the personal obligation of said Roberts for the sum of $16,000, and had pledged $15,000, par value thereof, with the Bank of New York, N. B. A., as collateral security for obligations of said Bank of Augusta, and the balance, $90,000, par value, the said Roberts stated that he had left with the Bank of New York, N. B. A., for safe keeping. I immediately notified the Bank of New York, N. B. A., that the complainant was the owner of said bonds, and demanded possession of them from said bank on behalf of the said complainant. Mr. Fry, the president of the Bank of New York, refused to deliver the said bonds, or any of them, and refused to recognize the claim of the Bethlehem Iron Company to them, or any of them. He admitted that the said Bank of New York had $105,000 of said bonds in its possession, and claimed that it had good title and right to possession of said bonds, and all of them. I then called on the Mercantile National Bank, in the city of New York, and demanded possession, which was refused, and was informed by the president, Mr. St. John, that the said William S. Roberts had pledged $40,000 of the aforesaid bonds with the said Mercantile National Bank, and that the said bank held them as collateral security for the said William S. Roberts' individual obligation to the amount of $16,000.

The said interviews with the officers of said two banks occurred in the presence of my counsel, Gen'l W. E. Doster, who accompanied me to make the demand.

Edward H. Walton stated also to me, at the interview in Augusta, that he had personally taken the said bonds from the vaults in Augusta, and had delivered the said bonds to William S. Roberts, and that he knew that said Roberts proposed to take said bonds to New York, and the purposes to which he intended to apply them; that said bonds were in several packages, and were marked as the property of the Bethlehem Iron Co., and were distinctinctly and
18 specifically designated and set aside as a special deposit belonging to said complainant.

WM. W. THURSTON.

Sworn to before me this first day of April, 1885.

DANIEL LORD, JR.,
Notary Public, City of N. Y.

I, John Sparks, clerk of the court of general sessions of the peace

and clerk of the court of oyer and terminer, held in and for the city and county of New York, each being a court of record and having a common seal, do hereby certify that the annexed is a copy of an indictment now on file in the clerk's office, and that the same has been compared by me with the original, and is a correct transcript therefrom, and of the whole of such original.

Given under my hand, and attested by the seal of the said court, this fourteenth day of April, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] J. SPARKS.

Court of General Sessions of the Peace of the City and County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
against
WILLIAM S. ROBERTS and EDWARD H. WALTON.

The grand jury of the city and county of New York by this indictment accuse William S. Roberts and Edward H. Walton of the crime of grand larceny in the first degree, committed as follows: The said William S. Roberts and Edward H. Walton, each late of the first ward of the city of New York, in the county of New York aforesaid, on the fourteenth day of February, in the year of our Lord one thousand eight hundred and eighty-four, at the
19 ward, city, and county aforesaid, with force and arms, ten written instruments and evidences of debt, to wit, the bonds and written obligations issued by the Georgetown and Lane's Railroad Company, a corporation duly existing under the laws of the State of South Carolina, and called "first mortgage bonds," in and by each of which the said railroad company acknowledged itself indebted to the bearer thereof in the sum of one thousand dollars, and which said sum the said railroad company thereby promised to pay on the first day of January, in the year of our Lord 1913, with interest, the same bearing date on the first day of January, in the year of our Lord 1883, and being then and there each duly signed by the president and secretary of the said railroad company, and sealed with the seal thereof, and numbered nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, and eighteen, respectively, and being then and there in full force and effect, and wholly unsatisfied, and of the value of one thousand dollars each (a more particular description of which said bonds and written obligations is to the grand jury aforesaid unknown), of the valuable things, evidences of debt, goods, chattels, and personal property of the Bethlehem Iron Company then and there being found, then and there feloniously did steal, take, and carry away against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

RANDOLPH B. MARTINE,
District Attorney.

Endorsed on back of indictment: Filed 10 day of April, 1885.

The People *vs.* William S. Roberts and Edward H. Walton. Grand larceny, 1st degree. Sections 528, 530, 740. Penal code. Randolph B. Martine, district attorney.

A true bill.

HENRY A. OAKLEY, *Foreman.*

Witnesses:
W. W. THURSTON.
W. P. ST. JOHN.

20 In the Matter of the Application of the BETHLEHEM IRON CO. for a Requisition against WILLIAM S. ROBERTS and EDWARD H. WALTON.

CITY AND COUNTY OF NEW YORK, *ss:*

William W. Thurston, being duly sworn, saith: I am the vice-president of the Bethlehem Iron Company, the complainant herein. The bonds of the Georgetown and Lane's railroad, referred to in my previous affidavit, were the property of the said complainant, and were deposited with the Bank of Augusta as a special deposit, and in package marked "The property of the Bethlehem Iron Co.," and evidenced by the receipts therefor already referred to, which were sent to my company at Bethlehem.

That the first intimation of any difficulty was derived from my seeing a notice in the newspapers that the Bank of Augusta had failed and made an assignment. I thereupon immediately proceeded to Augusta, Ga., to take possession of these bonds, the whole amount of which was $145,000.00 par value. I called on Roberts and Walton, who were respectively the president and cashier of the said Bank of Augusta, and demanded the return of the bonds on the 28th day of January, 1885, and the following is a statement of what transpired at that interview, which statement was made by me within an hour after the interview:

AUGUSTA, GEORGIA, *Jan'y 28th*, 1885.

On Wednesday, January 28th, 1885, at about a quarter past one, in company with Frank H. Miller, Esq'r, I called at the house of E. H. Walton. We were shown into a back room, where I was introduced to two gentlemen we found there, the one as W. S. Roberts, the other as E. H. Walton. Mr. Miller explained to Mr. Walton that we had called to get possession of certain bonds of the Georgetown and Lane's R. R. Co. belonging to the Bethlehem Iron Company, whom I represented as vice-president, as collateral security for certain joint obligations entered into by Messrs. Walton & J. A. Twiggs in favor of the Bethlehem Iron Co., such obligations stating upon their faces the amount of collateral going with them, and being further endorsed by
21 Roberts & Co. Mr. Miller farther said that the said Bethlehem Iron Co. had deposited said collaterals with the Bank of Augusta for safe keeping, and had the receipts for the president and cashier for said collaterals. Then Mr. Miller, tendering the receipts which he held in his hand, asked Mr. Walton to

give possession of the bonds, explaining the natural desire of the Bethlehem Iron Co. to get possession of them. Mr. Walton replied that he could not at once give possession of the bonds, as they were not in his possession, but could hand over $40,000 of them in two or three days. Further questioning by Mr. Miller elicited the fact that a portion of the bonds were held in New York by the New York Bank, N. B. A., not as collateral, but as a special deposit, and that, owing to the difficulties of the Bank of Augusta, the New York Bank refused to surrender them until the Bank of Augusta's indebtedness to them was satisfied. Mr. Walton afterwards stated that the amount of bonds as held was $90,000. Mr. Miller asked Mr. Roberts the numbers of the bonds so deposited. Mr. Roberts replied that Mr. Walton held the custody of the bonds. Mr. Walton then said that the $90,000 bonds above referred to were taken to New York by Mr. Roberts to be negotiated, and that Mr. Roberts, failing in the negotiations, left them with the New York Bank for safe keeping. To this Mr. Roberts assented in form. Mr. Miller asked Mr. Roberts when he took the bonds to New York. Mr. Roberts replied January, 1883, or thereabouts. Mr. Miller then asked Mr. Walton about the numbers of the bonds. Mr. Walton replied that he had kept no record of the numbers. Mr. Miller then asked what had become of the balance of the bonds, which were the property of the Bethlehem Iron Co. To this Mr. Roberts replied that they were held by the Mercantile National Bank of the State of New York as collateral for his personal obligation, for $16,000.00, which, Mr. Walton stated, the Bank of Augusta had no interest in or benefit from. In answer to Mr. Miller, Mr. Walton said that Mr. Roberts knew that the bonds used by him as above were the property of the Bethlehem Iron Co., to which Mr. Roberts assented. I asked Mr. Roberts what had become of the $15,000 additional bonds. He replied that they had been hypothecated with the New York Bank for
22 the Bank of Augusta, together with other securities. Mr. Miller then asked Mr. Walton, as one of the "*puiss* of the joint obligations with A. J. Twiggs," whether the collaterals having disappeared he had the means to meet his obligation. To which he replied that he had not means at his disposal at this time.

There was further conversation explanatory of and relating to above facts; also in relation to Mr. Twigg's ability to meet his obligations. In conclusion, Mr. Miller served upon Mr. Walton a formal demand for the bonds held by the Bank of Augusta as the property of the Bethlehem Iron Co.

That after consultation with my counsel, Frank H. Miller, subsequent to the said interview, he instructed me to come to New York and demand possession of the bonds, which I did without delay.

The Bank of New York Nat'l *Bank* Banking Association and the Mercantile National Bank both refused to deliver them up. On the 8th day of April inst., I first discovered the facts that ten of the bonds in question, Nos. 9 to 18, had been sent to New York on the 12th February, 1884, and were in the possession of the Mercantile National Bank. I had not previously been able to ascertain the numbers of any of the bonds held here in New York. I am advised

by my counsel in Georgia, Mr. Miller, that no criminal action can lie in Georgia against these defendants for the taking of our bonds and property, except such as may be instituted by said bank. No such action has been taken, although the crime was committed in January last. A civil action was commenced by us in Georgia against the bank in said month of January, but the bank has taken no action to punish the offenders. The action taken in this State is solely for the purpose of punishing the guilty parties and without any other desire whatsoever, and we were advised by counsel, both here and in Georgia, that unless this action is taken here, and the defendants tried in this State, they will, in all likelihood, escape entirely. The crime for which they are, as I am informed, indicted was consummated in this State.

The witnesses were present here, and it would be almost impracticable to secure an indictment in Georgia, and therefore it is respectfully urged that in the interest of justice the requisition should be granted.

WM. W. THURSTON.

23 Subscribed and sworn to before me this 18th day of April 1885.

DANIEL LORD, JR.,
Notary Public, City of New York.

In the Matter of the Application of the BETHLEHEM IRON COMPANY for a Requisition on the Governor of the State of Georgia for WILLIAM S. ROBERTS and EDWARD H. WALTON.

CITY AND COUNTY OF NEW YORK, *ss.:*

William P. St. John, being duly sworn, doth depose and say as follows: That he is the president of the Mercantile National Bank of the city of New York. That prior to the 23rd November, 1883, a loan had been made by said bank to the firm of J. P. Billups & Co., for the sum of $15,000, which loan was secured by the note of William S. Roberts, and also by thirty bonds of the Georgetown and Lane's Railroad Company. On the 12th February, 1884, said firm of Billups & Co. having failed or being about to fail, William S. Roberts came to the bank, which made an arrangement with him and Billups, by which said bank accepted his (Roberts') note for $16,908.14. Said note was to mature April 15th, 1884, and was secured by the aforesaid thirty bonds, and was also to be secured by an additional ten bonds, which said Roberts promised he would send for to Georgia. In accordance with such arrangement, on the 12th February, 1884, a dispatch was sent by him in the words and figures following:

"FEB'Y 12TH, 1884.

"E. H. Walton, cashier, Augusta, Ga.:

"Send by first express ten thousand Georgetown and Lane's railroad bonds to Mercantile National Bank, New York.

"WM. S. ROBERTS."

On the 14th February, 1884, said Mercantile National Bank received a letter, signed by Walton, of which the following is a copy:

24 "AUGUSTA, GA., *Feb'y 12th*, 1884

"Mercantile National Bank, N. Y.:

"GENTLEMEN: I have instructions from Mr. W. S. Roberts to send you 10 Georgetown and Lane's railroad bonds, which I forward by to-day's express.

"Respectfully, E. H. WALTON, *Cashier*."

On the said 14th February, 1884, said Mercantile National Bank received by express the said ten bonds of the said railroad company, which are numbered from 9 to 18, both inclusive, and which are the same bonds produced by deponent before the grand jury on which his testimony is founded. That on the 14th April, 1884, the amount for which said note was given was reduced to $16,000 by a payment received from said Roberts, and on May 17th, 1884, a new note was made and delivered by said Roberts, maturing June 19th, 1884, which has not been paid, for $16,000. That said Roberts corresponded with said Mercantile National Bank from time to time subsequent to the maturity of said last-mentioned note, begging said bank not to sacrifice the collaterals deposited by him, and the best recollection of deponent is that said Roberts once called upon deponent at said Mercantile National Bank, but said Roberts has not been to said bank, nor had any communication with said bank since 1st January of the present year, 1885. That said Mercantile National Bank holds the said forty bonds, being the thirty originally deposited and the additional ten deposited under the instructions of said Roberts, dated February 12th, 1884, as above stated, as collateral security for the individual indebtedness of said Roberts, evidenced by his note to the bank. That the bank of Augusta has no connection with the said indebtedness; the transaction was with the said Roberts, entirely for his own benefit and account, so far as it was understood by the said Mercantile National Bank.

WM. P. ST. JOHN.

Sworn to before me, this 21st day of April, 1885.

LUCIUS H. BEERS,
Notary Public, City of N. Y.

25 In the Matter of ROBERTS & WALTON.

COMMONWEALTH OF PA., } ss.:
County of North Hampton, Borough of South Bethlehem, }

Personally appeared before me, the subscriber, a notary public in and for the Commonwealth aforesaid, residing in the county and borough aforesaid, William W. Thurston, who, being duly sworn, saith: I am the vice president of the Bethlehem Iron Company, the complainant herein; that neither the complaint nor the application for a requisition of the defendants is instituted that any benefit or advantage may be derived from the extradition of the defendants in any civil action brought or to be brought against any person or per-

sons, corporation or corporations, in relation to the transaction referred to in my affidavit, nor is any such advantage expected from these proceedings.

WM. W. THURSTON.

Sworn to and subscribed before me this twentieth day of April, one thousand eight hundred and eighty-five.

Witness my hand and official seal.

[SEAL.] J. DAVIS BRODHEAD,
Notary Public.

STATE OF PENNSYLVANIA, }
County of Northampton, } *ss:*

I, George R. Hess, recorder of deeds, &c., in and for said county, do hereby certify that J. David Brodhead, Esq., whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument, and therein written, was, at the time of taking such proof or acknowledgement, a notary public in and for said county, duly commissioned and qualified, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such, and verily believe that the signature to the said certificate or proof of acknowledgement is genuine. I further certify
26 that said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at Easton, this twentieth day of April, A. D. 1885.

[SEAL.] GEO. R. HESS, *Recorder.*

EXECUTIVE DEPARTMENT,
STATE OF GEORGIA,
ATLANTA, GA., *April 28th,* 1885.

I, Howard E. W. Palmer, secretary of the executive department, State of Georgia, do hereby officially certify that the above and foregoing thirty (30) pages of writing hereto annexed with slips of paper writing attached to pages 5 and 7, respectively, constitute a true and complete transcript or copy of papers of file in this office in the matter of the requisition for William S. Roberts by the Governor of New York upon the Governor of Georgia.

Given under my hand and the seal of the executive department at the capitol, in the city of Atlanta, this April 28th, A. D. 1885.

[SEAL.] HOWARD E. W. PALMER,
Sec'y Ex. Department.

Affidavit of W. S. Roberts.

SOUTHERN DISTRICT OF GEORGIA, *City of Savannah:*

Personally appeared William S. Roberts, who, being sworn, says: That the ten bonds referred to as the subject of the crime of grand larceny in the State of New York by deponent set forth in the
27 record now here submitted on the hearing of this *habeas corpus* were sent to the Mercantile Bank of New York by an-

other person than affiant, and upon telegraphic instruction from affiant to send ten bonds of Georgetown and Lane's railroad by express to the Mercantile Bank. Deponent further says that there was at that time on deposit in the Bank of Augusta more than fifty thousand dollars of said bonds which were not the property of the Bethlehem Iron Co., and this deponent had no knowledge until after the ten aforesaid bonds had been sent to the Mercantile Bank that they were the property of the Bethlehem Iron Co. Deponent never saw the bonds that he is aware of at any time; that he did not deliver them to the Mercantile Bank. Deponent further says that the affidavit of Wm. W. Thurston, which declares that after indictment — found and before affiant could be arrested he fled is untrue. Deponent has not been in New York since said indictment was found. Deponent cannot at this late date swear positively that he was not in New York on Feb. 14th, 1884, but to the best of his recollection he was not. He was at the time president of the Bank of Augusta, and also engaged in mercantile business in Augusta, Ga. He was in N. Y. city *of* Feb. 12th, 1884, having gone on principally to settle this business about the $30,000 of bonds which he found deposited with the Mercantile Bank on his arrival in N. Y. This busines he concluded on Feb'y 12th, 1884. His note, which Billups had illegally deposited as collateral for his (Billups') debt, was about to fall due on Feb'y 14th, 1884. It is probable and deponent thinks true that in closing the matter with the bank he gave his note in renewal of his note deposited by Billups, and dated it Feb'y 14th, 1884, so as to meet the note falling due on that day, but the whole transaction was completed to deponent's best recollection on Feb. 12th, 1884, and deponent recalls nothing that could have detained him in N. Y. for two days longer. Deponent therefore feels confident that he must have left N. Y. before Feb. 14th, 1884, and was not in that State on the last-named day. Deponent further says that had he known that said ten bonds were the property of the Bethlehem Iron Co. he would at once have substituted others for them.

28 WM. S. ROBERTS.

Sworn to and subscribed in open court, this May 2d, 1885.

MARION ERWIN, *Dep. Clerk.*

Endorsement: U. S. ct. *In re* W. S. Roberts. Affidavit of W. S. Roberts. Filed May 2d, 1885. M. Erwin, clerk.

Affidavit of E. H. Walton.

STATE OF GEORGIA, *County of Richmond:*

Petition. Habeas Corpus.

Ex Parte WM. S. ROBERTS.

Personally appeared E. H. Walton, who, being duly sworn, deposes and says: That the ten bonds referred to in the record submitted on the hearing of the above petition as the subject of grand larceny by said William S. Roberts in the State of New York, were

not sent to the Mercantile Bank, of New York, by the said William S. Roberts. A telegram was received from said William S. Roberts to send ten bonds of the Georgetown and Lane's Railroad Company to the Mercantile Bank, of New York, by express. The said ten bonds were sent during the absence from Augusta of the said William S. Roberts. That said William S. Roberts did not know what particular bonds were sent, and said bonds were not sent through the said William S. Roberts, but were sent directly to said Mercantile Bank by express. As the purpose for which said ten bonds were to be used was not known, the ten bonds referred to were sent. Deponent has had occasion to know of the whereabouts of the said William S. Roberts for more than six months last past, and during
29 that time, and for some time previous thereto, deponent has had occasion to have daily business with him. Deponent knows that the said William S. Roberts has not been in the State of New York during the six months last past.

E. H. WALTON.

Subscribed and sworn to before me, this the 29th April, A. D. 1885.

WM. T. GRAY,
Not. Pub., Richmond Co., Ga.

Endorsement: In U. S. dist. court. *In re.* W. S. Roberts. *Habeas corpus.* Affidavit of E. H. Walton. Filed May 2d, 1885. M. Erwin, clerk.

Testimony Offered in Evidence by the Respondent.

Executive Warrant.

State of Georgia, by Henry D. McDaniel, Governor of said State, to all the sheriffs & constables thereof, Greeting:

Whereas his excellency, David B. Hill, Governor of the State of New York, and as the executive authority thereof, has demanded of me as the executive authority of this State William S. Roberts as a fugitive from justice from the State of New York, and has moreover produced a copy of indictment charging the said William S. Roberts with having committed in the said State of New York the crime of grand larceny in the first degree, which copy [of] indictment is duly certified as authentic by his excellency the Governor of the State of New York, and has also appointed and commissioned Philip Reilly agent on the part of the State of New York to receive said fugitive from the civil authorities of this State, to the end that he may be carried to the State of New York, there to be dealt with ac-
30 cording to law; and whereas it is suspected that the said fugitive from justice is now within the jurisdictional limits of this State:

Now, in accordance with the provisions of an act of Congress, passed the twelfth day of February, seventeen hundred and ninety-three, respecting "fugitives from justice," and in order that the said William S. Roberts may be brought to trial for the offense for which he stands charged, you are hereby commanded to arrest and de-

liver him to the said Philip Reilly, agent as aforesaid, so that he may be carried to the State of New York, within whose jurisdiction said offense is alleged to have been committed; and I moreover charge and require all officers, both civil and military, in this State, to be vigilant in endeavoring to apprehend the said William S. Roberts, fugitive as aforesaid.

Given under my hand and the seal of the executive department, at the capitol, in Atlanta, this 25th day of April, in the year of our Lord one thousand eight hundred and eighty-five, and of American Independence the one hundred and ninth.

[SEAL.] HENRY D. McDANIEL, *Governor.*

By the Governor: HOWARD E. W. PALMER,
Secretary, Executive Department.

Sheriff's Return.

GEORGIA, *Richmond County:*

Executed the within warrant by arresting William S. Roberts, and delivering him, pursuant to the mandate of the Governor, to Philip Reilly, agent on the part of the State of New York, at one p. m., April 26th, 1885.

W. DANIEL, *Sheriff, R. C., Ga.*

31 *Transcript of Record from Richmond County, Georgia, Superior Court.*

STATE OF GEORGIA, *Richmond County:*

To the Honorable Henry C. Roney, judge of the superior court:

The complaint and petition of Wm. S. Roberts showeth: That he now is, and for a few hours past of this day, Sunday, April 26th, 1885, *is* under arrest and in custody of one Philip Reilly, who claims to be agent of the State of New York, acting, as he claims, under a requisition from the State of New York upon the executive of Georgia, and authority of the Governor of said State of Georgia, and detains your petitioner without law or right, and without any copy of the indictment which is alleged to have been obtained against him, as will more fully appear by reference to the papers under which he claims to act, and which your petitioner, by reason of the day and haste of said Reilly to take him out of the State, is unable to copy and attach, your petitioner being arrested for the supposed crime of grand larceny.

Wherefore petitioner prays your honor to issue the State's writ of *habeas corpus* and *subjiciendum*, that petitioner, together with the cause of his capture and detainer, may be brought before your honor, to the end that whatever appertains to justice may be done; and your petitioner will ever pray, etc.

This April 26th, 1885.

WM. S. ROBERTS.

Personally appeared before me Wm. S. Roberts, who verifies the foregoing petition as true.

WM. S. ROBERTS.

Sworn to before me this April 26th, 1885.

H. C. RONEY,
J. S. C. A. C.

32 STATE OF GEORGIA, *Richmond County:*

To Philip Reilly:

You are hereby commanded to produce the body of William S. Roberts alleged to be illegally detained by you, together with the cause of such detention, before me, on the 27th day of April at court-house, city of Augusta, then and there to be disposed of — the law directs.

Given under my hand and official signature, this the twenty-sixth day of April, eighteen hundred and eighty-five.

H. C. RONEY,
J. S. C., A. C.

Amended Petition of W. S. Roberts.

Defendant, by leave of court, amends his grounds — illegality, as follows, to wit, because there is no copy of the indictment alleged to have been obtained in New York nor copy of the Governor's requisition accompanying the warrant of the Governor of this State in the hands of Philip Reilly, agent of the State of New York, and defendant is therefore unable to see if his detention is legal and by due authority of the law which obtains in this class of cases.

2. The warrant of the Governor of the State of Georgia shows upon its face that the copy [of] indictment upon which the warrant is founded is not properly authenticated.

3. Because the warrant of the Governor rests upon the assumed fact that Wm. S. Roberts, the defendant, is a fugitive from justice, when there is no evidence accompanying the papers under which he is arrested tending to show the fact, and when in point of fact and law he is not a fugitive from justice.

4. Because there is no time stated in warrant of the Governor of State of Georgia produced by Philip Reilly as to when this alleged indictment was found and where.

5. Because said warrant discloses no affidavit of the commission of the alleged crime, or that any such affidavit was before his excellency.

33 6. Because if any such crime as alleged was committed at all, it was committed in Georgia and the State of New York; *i. e.*, the facts upon which [it] is based occurred in Georgia.

7. Because the relator has good reason to believe, and does believe and thinks, he will be able to prove the same; that the attempted extradition of the relator is but a cloak used for the purpose of extorting from him the payment of an unjust debt claimed to be due by him to the Bethlehem Iron Works, a corporation of

Pennsylvania, and for which said corporation is now suing him in the superior court of Richmond co., Ga.

8. That since the filing of the foregoing grounds of illegality this defendant has been arrested by the constable of the 398 district G. M., on the charge of felony under section of the Code 4428 (*a*) on a warrant sued out by one Michael O'Dowd, of the city of Augusta.

APRIL 29TH, 1885.

Personally appeared before me W. S. Roberts, who being sworn, says the amended petition is true, and he is ready to verify the same.

WM. S. ROBERTS.

Sworn to before me.

H. C. RONEY,
J. S. C., A. C.

STATE OF GEORGIA, *Richmond County:*

Pursuant to the writ of *habeas corpus* served upon me at or about 4:30 p. m., April 26th, 1885, I herewith produce the body of William S. Roberts, and return as the cause of his detention the executive warrant of the Governor of Georgia under which he was delivered to me, and the authority issued to me by the Hon. David B. Hill, Governor of the State of New York, April 22d, 1885, here to the court shown, and a copy of which is annexed, under which I still hold him. I having, as the agent of the State of New York,
34 received said William S. Roberts from Wilberforce Daniel, sheriff of the county of Richmond, to be carried to the State of New York, there to be dealt with according to law.

Wherefore this respondent prays the said writ may be dismissed, at the cost of the relator.

PHILIP REILLY,

Sworn to & subscribed before me this 27th day of April, 1885.
H. C. RONEY,
J. S. C., A. C.

That the certified copy of indictment found for grand larceny in the State of New York, with evidence of fleeing from justice after the commission of the crime, were produced by him as received from Governor of New York, and delivered to the Governor of Ga., and retained in his office at the time of the issuing of the executive warrant under which the relator was placed in his possession by the sheriff of Richmond county.

Wherefore this respondent prays the said writ may be dismissed, at the cost of the relator.

PHILIP REILLY.

Sworn to and subscribed before me this 27 day of April, 1885.
H. C. RONEY,
J. S. C., A. C.

STATE OF NEW YORK, EXECUTIVE CHAMBER.

David B. Hill, Governor of the State of New York, to all to whom these presents shall come:

Know ye that I have authorized and empowered, and by these presents do authorize and empower, Philip Reilly to take and receive from the proper authorities of the State of Georgia William S. Roberts, fugitive from justice, and convey him at the exclusive cost of the county of New York to the State of New York, there to be dealt with according to law.

35 In witness whereof I have hereunto signed my name and affixed the privy seal of the State at the city of Albany this twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,
Private Secretary.

Habeas Corpus.

THE STATE *Ex Relatione* WILLIAM S. ROBERTS *vs.* PHILIP REILLY.

The relator having moved the court for a continuance, it is, for sufficient cause, ordered that the hearing be adjourned until Wednesday, April 29, at 9 a. m., at the city hall in Augusta; until which time the respondent is ordered to hold the body of the relator, subject to the order of this court.

April 27th, 1885.

H. C. RONEY,
J. S. C., A. C.

Habeas Corpus.

In the Matter of W. S. ROBERTS, Relator, *vs.* PHILIP REILLY, Respondent.

The issue that I am called upon to decide is whether the relator, W. S. Roberts, is unlawfully restrained of his liberty. He has invoked the aid of the writ of habeas corpus that his detention may be enquired into, distinctly alleging that his imprisonment is illegal.

36 In answer to this writ the respondent shows for cause the warrant of the Governor of Georgia based upon a requisition of the Governor of the State of New York, who demands the relator as a fugitive from justice from that State.

I am then asked to review this action of the executive of this State, and ascertain whether or not he should have honored the requisition; and in determining this question I have opened the door wide and let in all the evidence before the Governor, and other evidence on the trial. When shall the Governor deliver one of the citizens of this State to a foreign State under the extradition laws and the Constitution of the United States?

Our Code, Sec. 54, reads as follows:

"It is the duty of the Governor, under his warrant, to cause to be arrested and delivered up to the proper officers of another State of the United States, any fugitive from justice of said State, upon demand made of him by the executive of such other State, in the manner prescribed by the laws and Constitution of the United States."

Our own supreme court in contesting this section, in 13 Ga., p. 98, says:

"When a demand is made by the executive officer of one State for a fugitive from justice who has taken refuge in another State, under the provisions of the Constitution and laws of the United States, and a copy of the indictment found, as provided by act of 1793, shall be produced and duly authenticated, as required by that act, charging the person so demanded with having committed a crime against the laws of the State from which he fled, the executive officer of the State upon whom the demand is made for the surrender of such fugitive must be governed by the record produced; he has no authority to look behind the indictment and enquire whether the facts charged therein would constitute a criminal offence; but it is made his imperative duty under the supreme law of the land, which he has sworn to support, to surrender up such fugitive to the authorities of the State whose laws have been violated, having jurisdiction of the crime."

It will thus be seen that it is not necessary for the executive
37 to determine, from the record, whether a crime has been committed, but only that a crime is lawfully charged.

The record forwarded by the Governor of the State of New York to the executive of this State, and duly authenticated, shows that an indictment, regular on its face, was found in the county and State of New York against the prisoner, charging him with grand larceny, and of being a fugitive from justice from that State.

The record then being before the Governor, and he having no authority to look behind the indictment to see whether a crime has been committed, it was clearly his duty, under the law, to issue his warrant and surrender the prisoner to the officer of the State of New York.

But it is said, notwithstanding the issuing of the Governor's warrant, and the delivering of the prisoner to the officers of New York, he should be discharged because he is not a fugitive from justice.

While it is true that there was evidence submitted here not before the Governor on that question, which went to show that the prisoner was not in the State of New York when the crime was committed, yet that evidence, supported by the record, does show, in brief, that the prisoner was in the State of New York a short while prior to the finding of the indictment, and returned to his home in this county and State.

But it is insisted, that as the prisoner is charged with fleeing from justice after the finding of the indictment, he not having been

in the State of New York since then, he cannot be, in the sense of the law, a fugitive from justice.

Again, it is claimed that as there is no evidence that the prisoner has, at any time, fled from justice from the State of New York to this State, he is not a fugitive from justice.

Further, that the prisoner could not have been a fugitive from justice, because after the time of the alleged crime he returned to New York, saw and had dealings with the men he had outraged.

This view is not supported by the evidence, because the prosecutor was a citizen of Pennsylvania, and it nowhere appears
38 that he then knew of the alleged crime.

This, then, brings us to the question, When is one a fugitive from justice?

After a careful research of the authorities on this quetion I am clear that a fugitive from justice is one who commits a crime in one State and then goes beyond its jurisdiction into another State without waiting to abide the consequences of such act, and it is immaterial that he has gone to his home.

There need not be any "fleeing," in the ordinary acceptation of the term, for if it was necessary to prove that fact no criminal could be extradited who was not seen to flee.

If, then, it be a fact that the prisoner committed a crime in the State of New York and then left the State and returned to his home, either before or after the finding of the indictment, he is, in the eyes of the law, a fugitive from justice; but as to whether he committed a crime or not I am not to determine.

Sufficient to say that the record charges a crime, and that he is a fugitive from justice.

But it is strongly urged that the prisoner should be discharged, because this is an effort on the part of the prosecution to collect a debt.

As to the motive that actuated the prosecution in this case, it is not, in my opinion, proper to here pass upon; that must be remanded to the court charged with trying the prisoner.

The record, however, discloses evidence that the prosecution is *bona fide* and not to collect a debt. Ought, then, the prisoner to be discharged or remanded?

Code, sec. 4023, says: No person shall be discharged upon the hearing of a writ of *habeas corpus* in the following cases, to wit:

"Where he is imprisoned under lawful process issued from a court of competent jurisdiction."

"When the party is imprisoned under a bench warrant regular on its face."

"When it appears that the detention is authorized by law."

It, therefore, appearing that the prisoner is not unlawfully detained, but is held under a warrant issued by the Governor
39 of the State of Georgia, it is hereby ordered that the application for discharge be refused, and that the prisoner be remanded to the custody of Philip Reilly, the legally authorized agent

of the State of New York, in pursuance of the warrant of the Governor of this State.

May 1st, 1885.

H. C. RONEY,
J. S. C., A. C.

STATE OF GEORGIA, *Richmond County:*

I, William E. Keener, clerk of the superior court of said county, do hereby certify that the foregoing pages contain a true and correct copy of the record of file in said court of the *habeas corpus* case of William S. Roberts against Philip Reilly, including a copy of the decision rendered therein.

Witness my official seal as clerk and the seal of said court, this May ninth, 1885.

[SEAL.] WM. E. KEENER,
Clerk Superior Court, Richmond County, Georgia.

STATE OF GEORGIA, *Richmond County:*

I, Henry C. Roney, judge of the superior court of the Augusta circuit, in said State, of which said Richmond county is a part, do hereby certify that William E. Keener is the clerk of the superior court of said county; that his genuine official signature is attached to the foregoing certificate; that the same is in due form, by the proper officer, and entitled to full faith and credit.

Witness my official signature as judge, this ninth day of May, 1885.

H. C. RONEY,
Judge Superior Court, Augusta Circuit.

40 *Habeas Corpus. Clerk's Certificate to the Record.*

SOUTHERN DISTRICT OF GEORGIA, *ss:*

UNITED STATES *ex rel.* WILLIAM S. ROBERTS *vs.* PHILIP REILLY.

I, Marion Erwin, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true, correct, and complete transcript of the record and proceedings in the *habeas corpus* case of the United States *ex rel.* William S. Roberts *vs.* Philip Reilly, lately pending before the district judge of the United States for the southern district of Georgia, and appealed by the relator to the United States circuit court for said district, as the same remains on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said district court, at Macon, Georgia, this sixteenth day of May, A. D. 1885.

[Seal of the United States District Court, So. Dist. Ga.]

MARION ERWIN, *Clerk.*

Endorsement: In the circuit court of the United States for the southern district of Georgia. United States *ex rel.* William S. Roberts *vs.* Philip Reilly. *Habeas corpus.* Appeal from the district

court of the United States for the southern district of Georgia. Filed in clerk's office of the United States circuit court this 16th day of May, A. D. 1885. M. Erwin, deputy clerk U. S. circuit court.

41 *Bond on Appeal from District Court.*

UNITED STATES OF AMERICA, *Southern District of Georgia:*

Habeas Corpus.

In re WILLIAM S. ROBERTS, Petitioner.

Know all men by these presents that we, William S. Roberts, as principal, and Charles H. Phinizy, Thomas B. Phinizy, Thomas W. Coskey, & Hamilton H. Hickman, as securities, are held and firmly bound unto Edward C. Wade, as marshal of the United States for the southern district of Georgia, and to his successors in office, in the sum of ten thousand dollars, to be paid to the said Edward C. Wade, as United States marshal as aforesaid, and to his successors in office and assigns; to the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at Augusta, Georgia, in said district, the sixth day of May, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas the said William S. Roberts did petition the honorable Emory Speer, judge of the district court of the United States for the southern district of Georgia, for the writ of *habeas corpus*, alleging in said petition that he was restrained of his liberty in violation of a law of the United States;

And whereas said judge did render a final decision dismissing said writ and remanding said petition, and said petitioner having prayed that an appeal be taken in his behalf to the next circuit court for said district in which said cause was heard, in accordance with the statute of the United States in that behalf;

And whereas an appeal was allowed by said judge upon terms and under regulations, as follows—that is to say: that the said
42 William S. Roberts should be taken into custody of the United States marshal for said southern district of Georgia, to be by him safely kept, and that the said William S. Roberts should execute and deliver good and sufficient bond in the sum of ten thousand dollars, with security, to be approved by the judge of said district court, conditioned to deliver himself up to the marshal of said district, and to appear before said circuit court whenever and wherever ordered by said district court, or by said circuit court, and then and there abide and perform the judgment of said circuit court in the premises, and should cause to be sent to said appellate tribunal a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings and documents and affidavits in said cause immediately on the execution of said bond, and that upon the execution and approval of said bond as aforesaid, and the tender of the same, the said William S. Roberts should be discharged from the custody of said marshal and be allowed to go free, subject to the terms of said order

or the final decision of said appellate court, all of which will appear, reference being had to said proceeding and order:

Now, therefore, the condition of this obligation is such that if the said William S. Roberts shall well and truly comply with the terms of said order, and shall cause a transcript of said petition and record to be sent to said appellate tribunal, and shall deliver himself up to the marshal of said southern district of Georgia, and appear before the said circuit court for said district whenever or wherever ordered by the said district court or the said circuit court and then and there abide and perform the judgment of said circuit court in the premises, then this obligation shall be void; otherwise it shall remain in full force and virtue.

WM. S. ROBERTS. [L. S.]
C. H. PHINIZY. [L. S.]
THOS. B. PHINIZY. [L. S.]
THOS. W. COSKEY. [L. S.]
H. H. HICKMAN. [L. S.]

43 Signed, sealed, and delivered in the presence of—
[Seal of Samuel Levy, U. S. Circuit Court Commissioner, So. Dist. of Ga.]
SAML. LEVY,
United States C. C. Commissioner,
Southern District of Georgia.

Examined and approved, this 7th day of May, A. D. 1885.
EMORY SPEER,
U. S. Judge.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia:

Personally appeared before me Charles H. Phinizy, Thomas B. Phinizy, Thomas W. Coskey, & Hamilton H. Hickman, who, each being duly sworn, deposes & says for himself: That he is worth the sum of ten thousand dollars in his own right over and above his just debts and liabilities and exemptions allowed by law.

C. H. PHINIZY.
THOS. B. PHINIZY.
THOS. W. COSKEY.
H. H. HICKMAN.

Sworn to and subscribed before me, this 6th day of May, 1885.
[SEAL.] SAML. LEVY,
United States C. C. Commissioner, Southern District of Georgia.

Endorsement: In U. S. circuit court, so. dist. of Georgia. *In re* Wm. S. Roberts. *Habeas corpus.* Bond. Filed May 7th, 1885. M. Erwin, deputy clerk, U. S. circuit court.

44 Afterwards, to wit, on the 14th day of May, A. D. 1885, an order was made and entered in the said circuit court by the Hon. Emory Speer, district judge presiding, in the words and figures following, to wit:

Order for Transmission of Record.

Re WILLIAM S. ROBERTS.

Habeas Corpus.

It is hereby ordered that the clerk of the district court of the United States for the southern district of Georgia, eastern division, shall forthwith transmit to the Honorable William B. Woods, circuit justice, at Atlanta, Georgia, a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings and documents and affidavits in said cause, and that said cause be heard on appeal before the said circuit justice at the United States court-rooms in Atlanta, Georgia, on Monday morning next, 18th inst., at 10 o'clock, or as soon thereafter as the same can be heard.

May 14th, 1885.

EMORY SPEER,
U. S. Judge.

Endorsement: *In re* William S. Roberts. *Habeas corpus.* Order for transmission of record and appointment of time of hearing. Appeal. Filed in clerk's office May 14th, 1885. H. H. King, clerk.

Afterwards, to wit, on the 14th day of May, A. D. 1885, came the respondent, by Chisholm & Erwin and Frank H. Miller, and filed in the clerk's office of said circuit court a certified copy of an order made by the district court of the United States for said division and district in the words and figures following, to wit:

Certified Copy of Order.

45 In the District Court of the United States for the Eastern Division, Southern District of Georgia.

Re WILLIAM S. ROBERTS.

Habeas Corpus.

It is hereby ordered that the clerk of the district court of the United States for the southern district of Georgia, eastern division, shall forthwith transmit to the Honorable William B. Woods, circuit justice at Atlanta, Georgia, a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings and documents and affidavits in said cause, and that said cause be heard on appeal before the said circuit justice at the United States court-rooms, in Atlanta, Georgia, on Monday morning next, 18th inst., at 10 o'clock, or as soon thereafter as the same can be heard.

May 14th, 1885.

EMORY SPEER,
U. S. Judge.

I, H. H. King, deputy clerk of the U. S. district court, southern district of Georgia, do hereby certify that the foregoing is a true copy of the original order in the *habeas corpus* cause *In re* William S. Roberts, the same being on file and of record in this office.

In witness whereof I hereunto subscribe my name and affix the seal of said district court, at Savannah, Georgia, this 18th day of May, 1885.

[Seal of U. S. Dist. Court, So. Dist. Ga.]

H. H. KING,
Dep'y Clerk

Endorsement: *In Re* William S. Roberts. *Habeas corpus.* Order for transmission of record and appointment of time of hearing appeal. Certified copy. Filed in clerk's office May 14th, 1885. H. H. King, clerk.

Afterwards, to wit, on the 16th day of May, A. D. 1885, came the respondent, by Chisholm & Erwin and Frank H. Miller, and
46 filed in the clerk's office of said circuit court a notice and acknowledgement of service in the words and figures following, to wit:

Notice. Habeas Corpus.

In Re WILLIAM S. ROBERTS.

To the attorneys for the said William S. Roberts:

Please take notice that the Hon. Emory Speer, U. S. judge, granted an order yesterday, directing the clerk to transmit to the Hon. Wm. B. Woods, circuit justice, at Atlanta, Ga., a full transcript of the record, etc., in the above matter, and providing for the hearing of the case before said circuit justice, at Atlanta, on Monday morning next, 18th inst., at 10 o'clock, or as soon thereafter as the same can be heard.

Very respectfully,

FRANK H. MILLER,
CHISHOLM & ERWIN,
Att'ys for Respondent.

Acknowledgement of Service.

Service of within notice acknowledged this 15th day of May, 1885.

GEO. A. MERCER,
P'r O. B.,
Att'y for Wm. S. Roberts.

Endorsement: The United States of America *ex rel.* W. S. Roberts *vs.* Philip Reilly. Original. Filed May 16th, 1885. M. Erwin, dep. clerk.

Afterwards, to wit, on the 19th day of May, A. D. 1885, at the April term, 1885, of said circuit court, before Honorable Wm. B. Woods, circuit justice, sitting at Atlanta, Georgia, the said cause came on to be heard, and a decree was rendered in said cause in the words and figures following, to wit:

47 *Decree.*

In the Matter of Appeal of WM. S. ROBERTS from the Decision of the District Judge of the United States for the Southern District of Georgia, Eastern Division, under Petition for *Habeas corpus* against PHILIP REILLY:

This case came on to be heard before me pursuant to the order of the circuit court of the United States for the southern district of Georgia, eastern division, dated May 15th, 1885, to which court an appeal was allowed May 5th, 1885, and which was perfected upon the execution of a bond approved by the district judge, and filed May 7th, 1885.

After argument heard it is ordered that the judgement of the district judge of May 4th, 1885, "that the writ is disallowed, and the petition of the relator be dismissed, and that he be remanded to the custody of Philip Reilly," be, and it is hereby, affirmed at the costs of the relator.

It is further ordered that this order be entered on the minutes of the circuit court of the United States for the southern district of Georgia, eastern division, and a certified copy transmitted to the district judge of the United States for the southern district of Georgia, eastern division, for enforcement by him of his judgment of May 4th, 1885.

It further appearing that sufficient cause was shown before me for the non-appearance of the relator it is ordered that no liability rest upon the sureties upon the bond filed May 7th, 1885, for such non-appearance, but that said bond remain of full force until complied with by the delivery of the relator to the United States marshal to be turned over to said Philip Reilly, or such other duly constituted agent as may be appointed by the Governor of New York to receive him.

It is further ordered that the relator have leave to apply to the district judge for stay of his order of May 4th, 1885, until physically able to be removed, and that for the cause shown in the affidavit of Henry F. Campbell of May 18th, 1885, submitted at the hearing, and now ordered to be filed, that the delivery of the relator to Philip Reilly to be made by the marshal of Georgia, the obligee in

48 the bond, be stayed until June 19th, 1885.

May 19, 1885.

W. B. WOODS,
Circuit Justice.

Endorsement: In the circuit court of the United States, southern district of Georgia. United States *ex rel.* William S. Roberts *vs.* Phillip Reilly. *Habeas corpus.* Original order, May 19th, 1885. Filed May 22d, 1885. H. H. King, clerk.

An affidavit was introduced in evidence by counsel for relator on the hearing before Justice Woods on May 19th, 1885, in the words and figures following, to wit:

Affidavit of Henry F. Campbell.

GEORGIA, *Richmond County:*

Personally appeared Henry F. Campbell, who, being sworn, says he is a physician & surgeon, and professionally attending William S. Roberts, who is now confined to his bed in the city of Augusta, Georgia, suffering from a severe wound in the neck, inflicted by an attempt at suicide with a razor; that said William S. Roberts is unable to raise his head in bed, and affiant has not thought it prudent to allow him to move his head; that his danger is that of secondary hemorrhage. Affiant further says that the said Roberts is extremely weak from loss of blood, and that his removal from bed at this time, in his, affiant's, opinion, would endanger said Roberts' life. Affiant further says that he does not think said Roberts could be removed with safety within a month.

HENRY F. CAMPBELL.

Subscribed and sworn to before me this 18 day of May, 1885.

WM. VEASY,
Not. Pub., Richmond Co., Ga.

49 Endorsement: U. S. court. *In re* Wm. S. Roberts. *Habeas corpus.* Affidavit of Henry F. Campbell as to relator's condition. Filed May 22d, 1885. H. H. King, clerk.

Application for Appeal. Writ of Habeas Corpus.

STATE OF GEORGIA, *Southern District of Georgia:*

In the Circuit Court for said District.

WILLIAM S. ROBERTS, Relator, *vs.* PHILIP REILLY.

To the Honorable William B. Woods, judge of the United States Supreme Court:

The petition of William S. Roberts, the relator in the above-stated case, respectfully shows that on the twenty-sixth day of April, 1885, this relator was illegally deprived of his liberty by said Philip Reilly under an executive warrant issued by the Governor of Georgia upon a demand from the Governor of New York, in which demand it was alleged that your petitioner was a fugitive from justice from said State of New York. Your petitioner thereafter sued out a writ of *habeas corpus* before the district court for said district, which was heard by judge Speer of that court, and a decision rendered adverse to your petitioner, whereupon your petitioner appealed to the circuit court for said district, which appeal was heard by Judge Woods, of the United States Supreme Court, sitting as a circuit judge, whose decision was also adverse to the interests of your petitioner, all of which will more fully appear by reference to the petition, writ of *habeas corpus*, return thereto, and other
50 proceedings on file in the clerk's office of said circuit court.

Your petitioner further shews that he is desirous of entering an appeal to the Supreme Court of the United States from the de-

cision so rendered by Judge Woods against your petitioner as aforesaid Your petitioner further shews that he has already given bond, duly approved, conditioned to appear and surrender himself whenever and wherever required by the order of the said circuit court, which will fully appear by reference to said bond on file with the other papers in said cause in the clerk's office of said circuit court, and your petitioner hereby offers to give such further bond, if any further bond is required for his appearance, as may be indicated by your honor. He hereby tenders a bond for one thousand dollars as security for damages and costs in the cause, with Charles H. Phinizy as bondsman, which he prays may be approved, or, if judged insufficient, that your honor will indicate what will be sufficient security, and give your petitioner time to comply with the requirement. The usual justification of the bondsman and citation are also herewith presented, with the request that your honor will sign the latter and grant an order requiring the clerk of said circuit court to send up to the October term, 1885, of the United States Supreme Court a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings in said cause, and also grant a supercedeas of the judgments remanding the petitioner into the custody of the said Reilly already had in the case, and that your honor will make such other regulations and orders as well for the custody and appearance of your petitioner to answer the final judgment in the cause as for sending up the transcript as aforesaid, as provided for in sections 763, 764, 765, and 766 of the Revised Statutes of the United States as amended by the act of Congress of March 3d, 1885.

And your petitioner will ever pray, &c.

W. W. MONTGOMERY,
Pet'r's Attorney.

51 *Order.*

Upon the petition of William S. Roberts, relator in the foregoing case, praying the allowance of an appeal to the Supreme Court of the United States in said cause, and tendering a bond for damages and costs in the sum of one thousand dollars, with Charles H. Phinizy as bondsman, which bond is hereby approved, it is ordered that an appeal be allowed, and that the clerk of the United States circuit court for the southern district of Georgia, eastern division, do send up to the October term, 1885, of the Supreme Court of the United States a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings in said cause. Further ordered, That the judgments heretofore had in the cause remanding said Roberts into the custody of said Reilly be, and the same are hereby, superceded until the final decision of the Supreme Court can be had in the case, and that the bail of said Roberts retain him in their custody and produce him to answer whatever decision the Supreme Court may render in the cause, or if his bail have surrendered him into the custody of the United States marshal, that said marshal hold him to be produced to answer said judgment, with liberty to said Roberts to give a new bond in the sum of $10,000, with surety, to be ap-

proved by the undersigned, conditioned for his appearance to answer said judgment.

June 20th, 1885.

W. B. WOODS,
Associate Justice U. S. Supreme Court.

Endorsement: Southern district of Georgia, eastern division. In the United States circuit court for said district. Wm. S. Roberts, relator, *vs.* Philip Reilly. *Habeas corpus.* Application for appeal. Filed July 1st, 1885. H. J. Herb, dep. clerk. U. S. cir. c't; E. div., so. dist. Ga. W. W. Montgomery, applicant's att'y.

52 *Bond on Appeal.*

GEORGIA, *Richmond County:*

Know all men by these presents that we, William S. Roberts, principal, and Charles H. Phinizy, sureties, all of said county and State, are held and firmly bound unto Philip Reilly in the sum of one thousand dollars; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seal and dated this 18th day of June, 1885.

Whereas, William S. Roberts, relator in the case of William S. Roberts *vs.* Philip Reilly, lately determined in the United States circuit court for the southern district of Georgia, eastern division, against the relator, has taken an appeal to the Supreme Court of the United States to reverse the decision rendered in the above-entitled action by said circuit court:

Now, therefore, the condition of the above obligation is such that if the above-named William S. Roberts shall prosecute his said appeal to effect, and answer all "damages and" costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] WM. S. ROBERTS.
[SEAL.] C. H. PHINIZY.

Sealed and delivered in presence of—
SAML. LEVY.
JNO. P. ROBERTS.
"Damages and" first interlined.

Approved June 20th, 1885.

W. B. WOODS,
Associate Justice, U. S. Supreme Court.

Oath of Justification.

SOUTHERN DISTRICT OF GEORGIA, *Eastern Division, City of Augusta:*

53 Charles H. Phinizy, obligor to the foregoing bond, deposes and says, under oath, that he is a freeholder, residing in said eastern division of said district, and that he is worth the sum

of one thousand dollars over and above all his just debts and liabilities and the amount exempted from levy and sale by the laws of Georgia.

C. H. PHINIZY.

Sworn to and subscribed before me this June 18th, 1885.

[Seal of Sam'l Levy, U. S. C. C. C., So. Dist. Ga.]

SAM'L LEVY,

United States C. C. Commissioner, Southern District of Georgia.

Endorsement: Southern district of Georgia, eastern division. In the United States circuit court for said district. Wm. S. Roberts *vs.* Philip Reilly. *Habeas corpus.* Appeal bond. Filed July 1st, 1885. H. J. Herb, dep. clerk U. S. cir. c't. E. div. so. dist. Ga. W. W. Montgomery, applicant's att'y.

Certified Copy of Order of District Court of June 19th, 1885. Filed in Clerk's Office by Counsel for Relator. Habeas Corpus.

So. D. Ga., *Eastern Division:*

THE UNITED STATES OF AMERICA *ex rel.* WM. S. ROBERTS
vs.
PHILIP REILLY.

This case came on to be heard pursuant to the order of the circuit court of the United States for the southern district of Georgia, eastern division, dated May 19th, 1885, affirming the judgment of this court of May 4th, 1885, remanding the relator to the custody of Philip Reilly, and from which judgment an appeal was allowed by this court upon terms set forth in the order allowing the appeal.

A motion was made by the relator to stay the judgment of this court on account of the physical condition of the relator at
54 this time, which was resisted, and the court moved to place the relator in the actual custody of the marshal of the southern district of Georgia, or of Philip Reilly, to be removed in the discretion of such marshal or agent of the State of New York, from relator's present place of sickness to some other place, and when sufficiently restored to health to then be actually removed to New York, under the remand of May 4th, 1885.

After argument heard, it is ordered that the United States marshal for the southern district of Georgia take into his actual custody the relator, William S. Roberts, and hold him subject to the order of this court, placing said Roberts where his health will, in the opinion of said marshal, be best promoted, the costs and expenses of which are to be borne by the relator.

That when, in the opinion of the marshal, the removal can be had with safety, that he shall then report the fact to this court for its appropriate order.

That until delivery of said Roberts to said marshal, as herein directed, the bond filed by him May 7th, 1885, shall remain of force

and binding, but upon delivery of said Roberts to said marshal, pursuant to this judgment, the same be cancelled and declared void.

Ordered, further, that this order be entered on the minutes of the district court of the United States for the southern district of Georgia, eastern division, and a certified copy furnished the marshal for the southern district of Georgie for immediate enforcement.

June 19th, 1885.

EMORY SPEER,
U. S. Judge.

I, Marion Erwin, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the above and foregoing order is a true, correct, and complete copy of its respective original of file and remaining of record in my office.

Witness my official signature and the seal of the said district court, at Savannah, Georgia, this 22nd day of June, A. D. 1885.

[Seal of U. S. Dist. Ct, So. Dist. Ga.]

MARION ERWIN, *Clerk.*

55 Endorsement: United States district court, southern D. Ga., E. div. The United States *ex rel.* Wm. S. Roberts *vs.* Philip Reilly. Order June 19th, '85. Certified copy. Filed June 22d, 1885. M. Erwin, dist. clerk. Certified copy filed in circuit court June 22d, 1885. M. Erwin, dep. clerk.

Habeas Corpus.—Petition for Appeal to the Supreme Court, &c.

WILLIAM S. ROBERTS, Relator, *vs.* PHILIP REILLY.

The appeal of William S. Roberts, the above-named relator and appellant, respectfully shows that on the — day of April, 1885, the grand jury in and for the city and county of New York found what purports to be a true bill against this relator and one Edward Walton, charging them with the alleged crime of grand larceny, committed in the State of New York. That afterwards, in the same month, one —— made an affidavit that after the finding of said indictment this relator and said Walton fled from the State of New York and thus became fugitives from justice. Another affidavit, made by one ——, stated that said crime of grand larceny was committed on the 14th of February, 1884, in the State of New York.

Appellant further shews that on the — day of April, 1885, the Governor of New York made requisition upon the Governor of Georgia for the delivery of your petitioner as a fugitive from justice from said State of New York. Accompanying said requisition were certain affidavits and a copy of said indictment, which are fully set out in the record. There was no copy of the law of New York defining what constituted grand larceny in the State of New York, nor was there any copy of the law of New York setting forth what were the legal requisites of an indictment in that State accompanying said requisition; neither did any evidence accompany said
56 requisition shewing that your petitioner had ever been in the State of New York, except the affidavit hereinbefore referred

to, stating in general terms that your petitioner and said Walton had fled from New York after said indictment was found, which was fully rebutted by the evidence submitted on behalf of your petitioner, which appears in the record.

Your petitioner further shews that it nowhere appears from the record what is the official character of the persons before whom the affidavits were made which accompany the requisition of the Governor of New York. Such at least is the recollection of your petition's counsel, who draws this petition without the record before him; the statement is made subject to correction by the record.

Your petitioner further shews that the papers accompanying the requisition of the Governor of New York shew that the crime charged, if any crime was committed, was committed in Georgia and not in New York.

Your petitioner further shews that the defendant and appellee applied to the Governor of Georgia, as the agent of the State of New York, for a writ of extradition, and presented to him the requsition of the Governor of New York with the papers accompanying the same, all of which appear in the record. Whereupon the Governor of Georgia issued a writ of extradition against your petitioner, and delivered the same to said Reilly, under which your petitioner was arrested by the sheriff of Richmond county, Georgia, the home of your petitioner, and delivered by said sheriff to said Reilly, who was about to carry your petitioner out of Georgia when he was arrested by a writ of *habeas corpus* sued out by your petitioner before Judge Speer, judge of the district court for the southern district of of Georgia, before whom a hearing was had on the 4th day of May, 1885, and a decision rendered adverse to your petitioner. Whereupon your petioner appealed to the circuit court for the southern district of Georgia, eastern division, which court shortly thereafter adjourned without any hearing being had upon said appeal, if any hearing could have been had at that term, which was in session when said appeal was allowed. After the adjournment of said court, on motion of counsel for said Reilly, and over the objection of your petitioner's counsel, said appeal was heard by Judge
57 Woods, associate justice of the Supreme Court of the United States, and a decision rendered by him adverse to your petitioner's right to be discharged.

Your petitioner further shews that said hearing came on to be heard before Judge Woods pursuant to an order of said circuit court, dated May 15th, 1885, to which court an appeal was allowed May 5th, 1885, and which appeal was perfected upon the execution of a bond approved by the district judge, and filed May 7th, 1885, which order was not assented to by your petitioner.

Wherefore this appellant appeals as well from the order of said circuit court referring the case to Judge Woods to be determined in vacation as from the decision rendered by Judge Woods remanding your petitioner to the custody of said Reilly, and affirming the judgment of the district judge rendered May 4th, 1885, and prays that the order of said circuit court and a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings, as well as Judge

Wood's decision, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the order of the circuit court and the decision of Judge Woods may be reversed and a judgment rendered discharging your petitioner from the custody of said Reilly, with costs to your petitioner, or such other judgment as to the Supreme Court shall seem just.

Dated June 25th, 1885.

W. W. MONTGOMERY,
Petitioner's Attorney.

Habeas Corpus.

UNITED STATES OF AMERICA,
Southern District of Georgia, Eastern Division:

WILLIAM S. ROBERTS, Relator, *vs.* PHILIP REILLY, Appellee.

Before me personally came Charles N. West, who, being sworn, saith: That on the first day of July, 1885, he served on the appellee in the above-stated case herein named, to wit, Philip
58 Reilly, a copy of the foregoing appeal filed in this cause with the clerk of the circuit court in and for the eastern division of the southern district of Georgia by leaving said copy in the clerk's office of the circuit court aforesaid for said appellee.

CHAS. M. WEST.

Sworn to and subscribed before me, this first day of July, 1885.
[Seal of R. D. Locke, U. S. C. C. C.]

R. D. LOCKE,
U. S. Circuit Court Com'r.

Assignment of Errors. Habeas Corpus.

In the Supreme Court of the United States.

WILLIAM S. ROBERTS, Appellant, *vs.* PHILIP REILLY, Appellee.

Afterwards, to wit, on the second Monday of October, in this same term, before the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, came the said William S. Roberts, by W. W. Montgomery, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that an order was passed referring said cause to Judge Woods, to be heard by him in vacation, said order having been passed at a term of said circuit court which was in session when the appeal from the district judge was allowed, whereas appellant insists that the appeal from the district judge was to the term of said circuit court next after the judgment of the district from which the appeal was taken. Appellant further insists that no hearing could be had in vacation unless the record shews on its face that such hearing was had by consent of parties. Appellant further insists that the judgment of his honor Judge

Woods was error because there was no evidence showing that
59 the relator had ever been in New York since the alleged commission of the crime, or at the time of its commission, which was not fully rebutted; and again, because no copy of the laws of New York was submitted to the Governor of Georgia shewing what constituted grand larceny under the laws of New York.

And, again, because no copy of the laws of New York was submitted to the Governor of Georgia shewing that by such laws the indictment was sufficient, it manifestly appearing that said indictment did not charge any crime by the rules of the common law.

And, again, because the evidence submitted to the Governor of Georgia shewed that if any crime was committed it was committed in Georgia, and not in New York.

And, again, because it nowhere appears that the affidavits accompanying the requisition of the Governor of New York were sworn to before officers authorized to take them.

And the said Roberts prays that the said several judgments herein complained of may be reversed, annulled, and altogether held for naught, and he be discharged from custody and restored to all rights which he has lost by reason of the said executive warrant of the Governor of Georgia and the judgments complained of.

W. W. MONTGOMERY,
Appellant's Attorney.

Endorsement: Southern district of Georgia, eastern division. In the United States circuit court for said district. Wm. S. Roberts, relator, *vs.* Philip Reilly. *Habeas corpus.* Petition to Supreme Court and assignment of errors. Filed July 1st, 1885. H. J. Herb, dep. clerk. U. S. cir. c't, E. div., so. dis., Ga. W. W. Montgomery, appellant's att'y.

60 *Citation.*

By the Honorable William B. Woods, one of the judges of the Supreme court of the United States, to Philip Reilly:

Whereas William S. Roberts has lately appealed to the Supreme Court of the United States from a judgment in a *habeas corpus* case lately rendered in the circuit court of the United States for the eastern division of the southern district of Georgia made in your favor, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1885, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at Tecumseh, Alabama, the twentieth day of June, 1885.

W. B. WOODS,
Associate Justice U. S. Supreme Court.

GEORGIA, *Richmond County:*

Personally appeared James S. Hook, James C. C. Black, and William W. Montgomery, who, being sworn, say: That they are of coun-

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1885.

WILLIAM S. ROBERTS,
Appellant,
vs.
PHILIP REILLY,
Appellee.

MOTION TO ADVANCE.

Brief of W. W. Montgomery for Appellant.

STATEMENT.

The Governor of New York made a demand upon the Governor of Georgia for the appellant, as a fugitive from justice. Accompanying the demand was a duly certified copy of an indictment charging the appellant, and one Walton with grand larceny, in that they took and appropriated to their own use ten bonds belonging to "The Bethlehem Iron Works," not stating whether The Bethlehem Iron Works was a co-partnership, a joint stock company, or a corporation. The requisition from the Governor of New York was also accompanied by an affidavit of an officer of

the Bethlehem Iron Works, stating that after indictment found said Walton and Roberts fled from New York. There was no copy of the law of New York, defining, what constituted grand larceny under the law of New York; neither was there any copy of a law of New York, setting forth what where the legal requisities of an indictment for grand larceny by the New York law. No evidence was submitted to the Governor of Georgia to show that the appellant had ever been in New York, except said affidavit which charged him with having fled from the State after indictment found. This was abundantly contradicted by the affidavits of Walton and Roberts, proving that Roberts had not been in New York at the time charged, and was, in fact, in Augusta, Ga. during the whole time between the date of the indictment and the date of said affidavits.

One of the affidavits accompanying the requisition undertakes to set out the facts upon which the indictment is based. They are substantially as follows: Roberts was in New York on Feb. 12th, 1884, and on that day sent a telegram to Walton, then in Augusta, to send on to the Mercantile Bank of New York, ten of the first mortgage bonds of the Georgetown and Lane Railroad Company to be there deposited as collateral, to secure an individual note of Roberts held by that bank. Ten of the bonds of that railroad were sent on and received by that bank on Feb. 14, 1884, and are still held by it. These bonds are claimed by the Bethlehem Iron Works as its property. The indictment charges the crime to have been committed on the 14th of February, 1884. The telegram of Roberts told Walton to send the bonds on by express, and the proof shows that they were delivered to the express company on February 12th, in Augusta, directed to the Mercantile Bank in New York, where they arrived on the 14th of February. Roberts never saw the bonds in New York, and it nowhere appears that he

was in that State on February 14th, 1884, or at any time since except as above stated.

Roberts's affidavit also shows that at the time of sending his telegram to Walton, there were over $50,000 of the bonds, first mortgage, of the Georgetown and Lane Railroad, subject to Walton's control, and on which the Bethlehem Iron Works had no claim.

The Governor of Georgia issued his warrant on the case as made by the papers sent to him by the Governor of New York, under which Roberts was arrested by the sheriff of Richmond County, Ga., and delivered to the appellee. The writ of habeas corpus was taken out first in a State Court, and on its dismissal, then before the U. S. District Judge for the Southern District of Georgia, from whose decision, adverse to the relator, an appeal was taken and allowed May 7th, 1885, to the Circuit Court. On May 15, 1885, the District Judge passed an order requiring the Clerk of the District Court to transmit the record to Judge Woods, to be heard by him May 18, 1885, and from the decision of that Judge, denying a discharge, the case has been appealed to this Court.

AS TO THE MOTION TO ADVANCE:

Is the case one that the Court will advance?

Under Rule 26, criminal cases and "Revenue cases and cases in which the United States are concerned, which also involve or affect some matter of general public interest," may be advanced. The latter on motion of the Attorney General. It is certain that the case at bar is not one which concerns the Attorney General.

It is not a criminal, but a civil case.

Ex-parte Tom Tong, 108 U. S. S. Ct., R. 556.

Even if considered a criminal case for the purposes of this motion, it is not such a criminal case as can, under the

rule, be advanced. Only those criminal cases which come up from a State Court, can be advanced.

Act of 1866, 14 Stat. at Large 172, Sec. 69.
Rev. Statutes, Sec. 710.

The rule was adopted at December Term, 1866, to give effect to the Act of July 13, 1866. If any doubt ever existed as to the class of criminal cases embraced by the act, the Revised Statues, Sec. 710, settle the question.

Is it such a case as the Court in its discretion will hold to be of public importance?

Advancement is for public convenience.

U. S. *vs* Norton, 1 Otto, 558.

If not for public convenience, and defendant not in jail, no advance.

Ward *vs.* Maryland, 12 Wall, 163.

Even government cases not advanced, if public not inconvenienced by delay.

Hodge *vs* Richmond R. R. Co., 3 Otto, 1.
Barry *vs.* Mercien, 4 How., 574.

Causes not presenting questions entitling them to precedence, not advanced.

Penna. *vs.* Wheeling etc. Co., 11 How., 528.

Especially over objection of one party thereto.

La. *vs.* New Orleans, 13 Otto, 521.
See Amory *vs* Amory, 1 O., 356.

Private interests only involved, no advance, although both parties ask it.

Sage *vs.* C. P. R. R. Co., 3 O., 412–419.

If Act of 1866 in conflict with Rev. Stat., Sec. 710, the former repealed.

Rev. Stat., Sec. 5601.

It is therefore submitted that the case cannot be advanced.

W. H. Montgomery

Office Supreme Court U. S.
FILED.
OCT 13 1885
JAMES H. McKENNEY,
CLERK.

116-80

IN THE

Supreme Court of the United States.

October Term, 1885.—No. 992.

WM. S. ROBERTS *vs.* PHILIP REILLY

Appellant, not having seen the "motion to advance by appellee" before his brief was printed, calls the Court's attention here to the fact that parts of pages 1 and 2 and all of pages 9, 10, 11, 12, 13, and 14 of that motion are unsupported by the record. He, therefore, asks that the facts be taken from the record.

He does not admit the assumptions made in the motion that the requisition of the Governor of New York was "in conformity to law," that the appellant was "a fugitive from justice," and that "the case of appellant presents for determination solely a question of fact." Each of these assumptions is denied. The argument on the merits contained in the motion will be answered at the proper time.

W. W. MONTGOMERY,
For Appellant.

116-80

In the Supreme Court

OF THE UNITED STATES.

—o—

OCTOBER TERM, 1885—NO. 992.

—o—

WILLIAM S. ROBERTS,
Appellant.
vs.
PHILIP REILLY,
Appellee.

Brief of W. W. MONTGOMERY for APPELLANT.

AMENDMENT TO ASSIGNMENT OF ERRORS.

In the Supreme Court

OF THE UNITED STATES.

—o—

OCTOBER TERM. 1885—NO. 992.

—o—

WILLIAM S. ROBERTS,
Appellant.
vs.
PHILIP REILLY,
Appellee.

Brief of W. W. MONTGOMERY for APPELLANT.

AMENDMENT TO ASSIGNMENT OF ERRORS.

By way of amendment to this assignment, Appellant says:

That the Circuit Court erred in not discharging Appellant, for the reason that the affidavits on which the requisition of the Governor of New York is found are not authenticated by him.

And again, because the warrant of the Governor of Georgia does not state upon what evidence it is issued, or that the Governor was satisfied from the testimony that a case was made which required him to exercise the power of extradition conferred upon him by the United States Constitution and the Act of Congress.

And again, because the affidavits on which the indictment and requisition mainly rest, are taken before the leading counsel of the prosecution in the case, such counsel acting as a notary public.

And again, because the facts show a crime under the laws of Georgia, which even if they show a crime under the laws of New York also, take the case out of the operation of the extradition laws.

W. W. MONTGOMERY.

STATEMENT.

The Governor of New York made a demand upon the Governor of Georgia for the Appellant as a fugitive from justice. Accompanying the demand was a duly certified copy of an indictment charging the Appellant and one Walton with grand larceny, in that they took and appropriated to their own use ten bonds belonging to the "Bethlehem Iron Works," not stating whether the Bethlehem Iron Works was a co-partnership, a joint stock company or a corporation. The requisition from the Governor of New York was accompanied by an affidavit of an officer of the Bethlehem Iron Works, stating that after indictment found said Walton and Roberts fled from New York. There was no copy of the law of New York defining what constituted grand larceney under the law of New York: neither was there any copy of a law of New York setting forth what were the legal requisites of an indictment for grand larceny by the New York law. No evidence was submitted to the Governor of Georgia to show that the Appellant had ever been in New York, except said affidavit which charged him with having fled from the State after indictment found. This was abundantly contradicted by the affidavits of

Walton and Roberts, proving that Roberts had not been in New York at the time charged, and was, in fact, in Augusta, Ga., during the whole time between the finding of the indictment and the date of said affidavits.

One of the affidavits accompanying the requisition undertakes to set out the facts upon which the indictment is based. They are substantially as follows: Roberts was in New York on February 12th, 1884, and on that day sent a telegram to Walton then in Augusta, to send on to the Mercantile Bank in New York, ten of the first mortgage bonds of the Georgetown and Lane Railroad Company, to be there deposited as collateral to secure an individual note of Roberts held by that Bank Ten of the bonds of that railroad were sent on and received by that bank on February 14, 1884, and are still held by it. These bonds are claimed by the Bethlehem Iron Works as its property. The indictment charges the crime to have been committed on the 14th of February, 1884. The telegram of Roberts told Walton to send the bonds on by express, and the proof shows that they were delivered to the express company on February 12th in Augusta, directed to the Mercantile Bank in New York, where they arrived on the 14th of February. Roberts never saw the bonds in New York, and it nowhere appears that he was in that State on February 14th, 1884, or any time since, except as above stated.

Roberts' affidavit also shows that at the time of sending his telegram to Walton, there were over $50,000 of the bonds first mortgage, of the Georgetown and Lane Railroad, subject to Walton's control, and on which the Bethlehem Iron Works had no claim.

The Governor of Georgia issued his warrant on the case as made by the papers sent to him by the Governor of New York, under which Roberts was arrested by the Sheriff of Richmond County, Ga., and delivered to the Apellee. The writ of *habeas corpus* was taken out first in a State Court, and on its dismissal, then before the United States District Judge for the Southern District of Georgia, from whose decision, adverse to the relator, an appeal was taken and allowed May 7th, 1885, to the Circuit Court. On May 15th, 1885, the District Judge passed an order requiring the Clerk of the District Court to transmit the record to Judge Woods, to be heard by him May

18, 1885, and from the decision of that Judge denying a discharge, the case has been appealed to this Court.

The Bethlehem Iron Company is, through its vice-President W. W. Thurston, the Prosecutor.

Thurston makes the two most important affidavits (he also makes three others) one to obtain the indictment, and the other for the requisition, before the leading counsel of the company acting as notary public.

These two affidavits are not authenticated in any way, and none of the affidavits are authenticated by the Governor of New York.

Another of the affidavits is made by Thurston in Pennsylvania.

The warrant of arrest does not show any evidence upon which the Governor of Georgia acted, nor any conclusion arrived at by him from the evidence submitted.

The questions involved are :

1st. To what term of the Circuit Court was the appeal taken ?

2d. Can a prosecutor in a criminal case make his affidavits upon which he founds his application for indictment and requisition, in the case of a fugitive from justice, before his own counsel, acting as notary public ?

3d. Has the Court jurisdiction to review a Governor's warrant of extradition, and to go behind his decision ?

4th. If it has, what facts must be established before the Governor is authorized to issue his warrant and how are these facts to be shown ?

5th. Can the alleged fugitive rebut the proof offered by the demanding Governor, and how ?

6th. How are the papers accompanying the demand as evidence to be authenticated ?

7th. What should the extraditing warrant show on its face ?

8th. When the evidence submitted by the demanding Governor shows that the crime charged is punishable under the laws of the State upon which the demand is made, is the Governor of that State authorized to issue his warrant ?

These questions are all raised upon the evidence as it appears in the record, and the assumption of jurisdiction by the Circuit Court, pending at the time of appeal from the District Judge.

The error relied on is the judgment of the Court below, which appears in the record, remanding the relator, which was in effect holding that the affidavits were properly made and authenticated; that all facts were established which were necessary to authorize the issuing of the warrant; that the warrant itself was sufficient to authorize the arrest and extradition of the relator, and that although the evidence showed that the crime was punishable by the laws of Georgia, nevertheless, the extradition was proper.

And that the Circuit Court in session at the time of appeal from the District Judge was the proper term at which to hear the appeal.

ARGUMENT.

The attention of the Court is first called to the danger of oppression in extradition cases, as emphasized in *ex parte* Kaine, 14 How., 112-113.

Certainly in the case at bar there has been a relentless pursuit of the Appellant by a party in no way concerned, either officially or as a private citizen in the enforcement of the criminal laws of New York.

After the crime, if one exists, has slept for more than a year, a corporation, not an individual of another State, makes application for the indictment.

Record, page 10.

The proceedings are instituted by affidavits of the Vice-President of the foreign corporation, before the leading counsel of that corporation, acting as a notary public.

Record, pages 10-11-13-15.

Having obtained the indictment, the corporation then applies for the requisition.

Record, pages 9-13-15-16.

Walton, who is naturally the chief witness for Roberts, and who, the proof offered by relator shows, was in Georgia during the whole transaction, is joined in the indictment. It is fair to presume for no purpose but to prevent his going to New York to testify for Roberts. It will be noted that the same evidence is presented to the Governor of New York in Walton's case as that offered in the case of Roberts, yet no requisition is obtained for Walton.

At least one of the affidavits of the Company's vice-President is made in Pennsylvania, Record 16, indicating, it is submitted, that the prosecution originated in that State, and not in New York.

Under these facts, the Court is asked to search closely for the motives of this over-zealous and officious prosecutor, and to hold it to a strict compliance with all the requirements of the law of extradition.

Even in civil cases all proceedings founded on an affidavit of the institutor of such proceedings, taken before his own counsel, are void.

37 Georgia, R. 678, see *ante*, quoted on page 382. The same rule obtains in New York. Taylor vs. Hatch, 12 Johns. R. 340.

It will be noted that while none of the affidavits accompanying the requisition are properly authenticated (as will be hereafter shown) those sworn to before "Daniel Lord, Jr., Notary Public, City of New York." are not authenticated at all, and these form the foundation of the indictment and requisition.

Mr. Lord is shown by the paper filed by Appellee October 19th, to be leading counsel for the so-called "complainant."

"A requisition made in any other interest than that of public justice, is a fraud, however regular in form."

Judge Cooley, from Spear 403.

The appeal was to the November term, 1885, of the Circuit Court. United States Rev. Statutes §631-4982.

The Court has jurisdiction to review the action of the Governor of Georgia, and to go behind his executive warrant.

Spear on Extradition, 278.

3 McLean's Reports, 120.

Jones vs. Leonard, 32 Am. R. 116 (Iowa.)

56 New York R., 182.

84 New York R., 438.

8 Reporter, 532 (34 Ohio.)

Cooley on page 16, note 1 (5th ed.)

44 Ga. R., 357, h. n. 3.

The Governor's finding is only *prima facie* true.

Ex parte, Reggel, 114, U. S., 642.

And the relator can show by evidence *dehors* the requisition papers that his case does not come under the extradition law.

Spear 488-9, citing Mohr's case.

To authorize the Governor upon whom the demand is made to issue his warrant, certain jurisdictional facts must be made to appear. They are:

1st. A crime must be charged.

2d. There must be an actual fleeing from justice. To constitute such fleeing, the accused must have been in the demanding State at the time the crime is alleged to have been committed, and have subsequently left it. Constructive presence is not sufficient.

3d. There must be a "demand of the executive authority of the State, from which the accused fled."

4th. The act charged to be crime must have been done in the demanding State. Here it is not sufficient to *charge* it to have been there done—the evidence must show it. If it does not, the accused must be discharged.

5th. The papers presented by the demanding Governor to sustain the requisition must be duly authenticated by him.

A crime must be *charged*—i. e., legally charged.

Is there such a charge?

At common law the indictment is fatally defective in that it fails to allege the goods to be the property of any one.

1 Chitty's Cr. Law, 213. (5 Am. ed.)

3 Ib., 947 a. Commonwealth vs. Manley, 12 Pick., 173-4.

2 Russell on Crimes, 99-100 (5 Am. ed.)

It is competent for the Court to determine whether a crime has been legally charged, and if not, to discharge the prisoner.

Spear, 369. People vs. Brady, 56 N. Y., 182.

Common Law presumed to control.

Cooley cited in Spear, 372, 376 (3) 377 (8).

The Court must "determine the question, whether, *according to the papers* a crime has been really charged, and whether the charge is sufficiently explicit to be legal in its character, and also whether the party is shown to be a fugitive from justice. Spear, 498.

Since the Penal Code of New York went into effect (Sept. 1882, it is inferred) is it not necessary for indictment to allege the property stolen is in the corporation ?

The People vs. D'Argencour, 95 N. Y. R. 630-1.

Must allege owner of goods stolen to be a corporation.

McCarney vs. People, 83 N. Y. R., 408.

There must be an actual presence in the demanding State at the time the crime is charged to have been committed, and a subsequent departure therefrom. And of both these facts there must be *positive* proof.

In re., Smith (Mormon Prophet.) 3 McLean, C. C. R. 132 136, 138.

32 Am. R. 116, 133-4-5.

Hurd on Habeas Corpus, 606-7-609.

Cooley, 16 n. 1. Spear on Extradition, 274.

Constructive presence sufficient for indictment, hence indictment does not show presence in demanding State.

The competency of the evidence on which the Governor acted may be enquired into.

3 Blatchf., 1.

56 N. Y. R., 182 84 N. Y. R. 438.

And the accused may offer parol evidence.

U. S. Rev. Statutes §760.

Wilcox vs. Nolze, 8 Reporter, 532. (34 Ohio).

32 Am. R., 116.

If warrant of Governor issue upon insufficient evidence (and it is submitted, if the *prima facie* evidence upon which he acted is rebutted) the Court will discharge accused.

3 Blatchford, 160.

Without a positive statement of a personal presence in the demanding State at the time of the commission of the crime charged, the affidavit of a fleeing states a legal conclusion, not a fact.

3 McLean, 135, 132, 136, 138.

32 Am. R. 116.

"§ 528. *Larceny defined.*—A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, either—

1st. Takes from the possession of the true owner, &c.; or,

2d. Having in his possession, custody, or control, as a bailer, servant, attorney, agent, clerk, trustee, or officer of any person, association or corporation, or as a public officer, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody or control, any money, property, evidence of debt, or contract, *article of value* of any nature or thing in action or possession, appropriates the same to his own use, or that of any other person than the true owner or person entitled to the benefit thereof, steals such property, and is guilty of larceny."

"§ 530. *Grand Larceny in first degree.*—A person is guilty of grand larceny in the first degree who steals, or unlawfully obtains or appropsiates in any manner specified in this chapter,

1st. Property of any value, by taking the same from the person of another in the night time; or,

2d. Property of the value of more than twenty-five dollars, by taking the same in the night time from any dwelling-house, vessel, or railway car; or,

3d. Property to the value of more than five hundred dollars in any manner whatever.'

"§ 540. *Bringing stolen goods into State, larceny.*—A person who having, at any place without the State, stolen the property of another, or received such property, knowing it to have been stolen, brings the same into this State, may be convicted and punished in the same manner as if such larceny or receiving had been committed within the State. Complaint may be made and the indictment found and tried, and the offense may be charged to have

been committed in any county into or through which the stolen property is brought."

FROM THE N. Y. CODE OF CRIMINAL PROCEDURE.

"§ 139. *Conviction or acquittal in another State, a bar, where the jurisdiction is concurrent.*

When an act charged as a crime is within the jurisdiction of another State, Territory or County, as well as within the jurisdiction of this State, a conviction or acquittal thereof, in the former, is a bar to a prosecution or indictment therefor in this State."

"§ 275. *Indictment what to coutain.* * * *

2. A plain and concise statement of the act constituting the crime without unnecessary repetition."

"§ 283. *Words in a statute need not be strictly pursued.*

Words used in a statute to define a crime need not be strictly pursued in the indictment, but other words, *conveying the same meaning*, may be used."

"§ 284. *Indictment when sufficient.*

The indictment is sufficient if it can be understood therefrom.

* * * * * *

4. That the crime was committed at some place within the jurisdiction of the court; except where, as provided by sections 133 to 138, both inclusive, the act, though done without the local jurisdiction of the county, is *triable* therein. * * *

6. That the act or omission, charged as the crime, is plainly and concisely set forth.

7. That the act or omission, charged as a crime, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction, according to the right of the case."

Many of the Courts insist, and apparently the weight of authority is to the effect, that there is no fleeing unless the demanding State was left by the accused for the purpose of avoiding the punishment due to the crime.

1 Bouvier's Law Dic., "Fugitive from Justice."

Spear on extradition, 380, 1, 2, 3, 4, 5 (Governor Cullum's opinion).

Jones vs. Leonard, 32 Am. R., 118.

Spear, 486, animadverting on the ruling of a majority of the Court in the Swearingen case.

13 So. Ca. R. 74.

Spear concludes, "the view of C. Justice Willard (the dissenting Justice) is the better view of the question."

If this is the law, then clearly Roberts is no fugitive. No evidence sustains the idea that he left New York to escape punishment.

On the contrary, it is shown (affidavit of St. John, Record 16) that he was in constant communication with the Appellant, making no attempt to conceal himself.

And it nowhere appears that Roberts has been in New York since February 12th, 1884, two days before the crime is charged to have been committed.

But conceding that the commission of a crime in one State and the subsequent departure from that State into another, even though such departure is not instigated by a fear of punishment, constitute the accused a technical fugitive, yet it is essential there should be positive proof that he was in the demanding State at the time the crime is charged to have been committed.

This essential proof is absent, unless the statement of a conclusion of law (so-called in charity; if it purports to be a statement of fact the affidavits of Roberts and Walton show it to be perjury) found in Thurston's affidavit of April 14th, to the effect that "he (affiant) knows that William S. Roberts and Edward H. Walton, were on the 10th day of April, 1885, duly indicted for the crime of grand larceny; that before being arrested the said Wm. S. Roberts and Edward H. Walton fled from the State of New York, and are now fugitives from justice at Augusta in the State of Georgia," is taken as supplying this essential testimony. This statement is a mere conclusion of law.

Jones vs. Leonard, 32 Am. R., 117. (50 Iowa, 106.

Ex parte Reggel, 114, U. S. R.

Spear, 388-9.

Mr. Spear, in summing up the various decisions on flight from justice, says: Some of the decisions assume that if the party charged with crime is found in the State asked to extradite him, this, without other evidence, sufficiently proves him a fugitive from justice.

This is shocking to the moral sense, and necessarily assumes that a constructive presence in the demanding State, and a constructive flight fulfils the requirements of the constisution, and of the act of 1793.

Other decisions, again says Mr. Spear, "seem to favor the idea that the finding of the Governor on this question of fact, *if stated in the warrant of arrest*, is conclusive."

As shown in the case at bar, the Governor's warrant contains no such statement. The Governor of Georgia finds nothing, but simply yields blind obedience to the requisition.

"Still other decisions," Mr. Spear continues, "proceed upon the theory that the party, in a proceeding on habeas corpus, may deny that he is a fugitive from justice, or that he was in the demanding State or Territory at the time of the alleged offense, and that the Court may hear and consider evidence outside of the papers in the settlement of this question of fact."

This is not stated with Mr. Spear's usual accuracy.

He means to say, as an examination of the decisions referred to, and of his own preceding pages abundantly shows, that if, after an examination of the papers, the Court is of opinion that the demanding State has made out a *prima facie* case, the accused will be permitted to rebut the presumption raised by offering testimony "outside the papers."

And this, both as to his presence in the demanding State at the time the crime is charged to have been committed, and as to the fact of his being a fugitive from justice.

Mr. Spear concludes by saying that the view taken by the decisions last referred to "is the one that best accords with right, reason and justice."

Spear 499.

And in this conclusion Mr. Wharton fully concurs.

Wharton's Criminal Pl. and Pr. (8th ed.) §35.

Of course, if no *prima facie* case is made against the accused, he will be discharged without being required to produce evidence to show a negative.

Again, the crime must be charged to have been committed in the demanding State.

Is it grand larceny in New York for a person in that State to telegraph to another in a distant State to misappropriate property in the latter State by sending it to New York, and it is so sent ?

At common law, it certainly is not a crime committed in New York, but in the State where the property is first misappropriated, and the accused cannot be indicted in New York.

Wilcox vs. Nolze, 8 The Reporter, 532 (34 Ohio.)

1 Bennet's and Hurd's leading crim. cases, 212.

5 Binney (Pena.) 617.

Spear's Extradition, 271-384.

Lee vs. the State, 64 Ga., 204.

The act charged by the papers submitted with the requisition is undoubtedly a crime in Georgia.

The law of Georgia making the act set forth in the papers accompanying the requisition a crime, punishable by her law, is as follows:

"Code, §4406. *Larceny of Bonds, Notes, etc., Penitentiary* " *One to Four Years.* If any person shall take and carry away " any bond, note, bank bill or due bill, or paper or papers, se- " curing the payment of money or other valuable thing, or any " receipt acquittance, or paper or papers operating as a dis- " charge for the payment of money or other valuable thing be- " longing to another, with the intent to steal the same, such " person shall be guilty of simple larceny, and be punished by " imprisonment and labor in the Penitentiary for any time not " less that one year nor longer than four years."

Section 4422 reads: "*Any Bailor fraudulently converting the goods or proceeds.*

"If any factor, commission merchant, warehouse keeper, " wharfinger, wagoner, stage driver, or other common carrier, " on land or water, *or any other bailie*, with whom any money " bank bill or bills, note or notes, bill or bills of exchange, " draft or drafts, check or checks, *bond or bonds* or other secu- " rity or order for the payment of money or other valuable " thing, or any cotton, corn, or other produce, goods, wares or

Upon the same principle it is submitted that the warrant should show on its face that sufficient proof was submitted to the Governor of Georgia to convince him that Roberts was in New York at the time the crime is charged to have been committed, and that he there did the act charged to be a crime.

This the Warrant fails to do. Record 19 and 20.

The warrant, as will appear by inspection, is founded solely on *demand* of the Governor of New York, and takes notice of none of the evidence offered in support of that demand.

It affirmatively appears that the Governor of Georgia felt compelled to comply with the demand without exercising any right to judge of the sufficiency of the evidence to prove the jurisdictional facts which, under the law, he must have found to exist before he could comply with the demand. He should have "judged for himself," as did Governor Culllom, of Pennsylvania.

Spear 391-2.

Warrant not accompanied by papers must recite evidence on which it is issued.

57 American Decisions, 398.

And it would be necessary to recite it in all cases.

People vs. Donohue, 84 N. Y. R. 438.

People vs. Pinkerton, 77 N. Y. Reports, 245.

In the two last cases the warrants recite the evidence and the indictment charges the fleeing.

Warrant insufficient. Matter of Romaine, 23 California, 585.

Must be under the Great Seal of the State.

Vallard vs. Sheriff, 2 Mo. 56.

Great Seal of Georgia. Code of Georgia, §86.

Executive Seal. Code of Georgia, §78.

Requisition no warrant for arrest. In the absence of other authority, prisoner discharged.

7 Abbot's Pr. (N. S.) 67.

Authorities Cited for Appellee in Brief Filed on Motion to Advance.

Taylor vs. Tamtor, 16 Wal., 371, was an attempt by bail to escape liability for non-production of their principal, on the following facts: The latter was indicted and bailed in Connecticut; principal went to New York and was there extradited on a requisition from Maine. Held that the bail were not exonorated; and the remark made by the Court that there could be no inquiry going behind the decision of the Governor, had reference to a case put by the Court, that if Connecticut had made a demand at the same time with Maine, the decision of New York surrendering the prisoner to one or the other demandant, would have been conclusive as between the demandants. The remark is obiter, and even if called for by the case, its application is not perceived.

It is scarcely necessary to treat seriously the point that the decision of the State Court is a bar to a second habeas corpus.

The case of Perry vs. McLendon, 62 Georgia, 598, relied on is a case of bail trover where the parties having the property in possession refused to produce it or to give security for its forthcoming, and were imprisoned under the Statute. They sued out, one after another, writs of habeas corpus, and after a fourth remand in the case of one prisoner and a third in that of another, the case came before the Supreme Court.

The Court say: "It would seem from the authorities, or some of them, that where there is no power of review, there may be one writ of habeas corpus after another *ad infinitum*. But if there can be a review, is there any reason, *especially in civil cases*, in which the struggle is between party and party, and not with the King or Commonwealth on one side and the subject and citizen on the other, why the first adjudication, if acquiesced in, should not be final and conclusive."

Here two Commonwealths are against the citizen: and there was no mode of superseding Judge Roney's decision.

Irwin vs. Jackson, 34 Ga., 101.

Principal reaffirmed. McLendon vs. Smith, 68 Ga., 36.

What avail then would an appeal to the Supreme Court have been?

The decision of the Supreme Court in Perry vs. McLendon, at the Febuary term, 1879, promptly produced the act of August 11th, 1879, providing for the discharge of prisoners held under trover bail process.

Acts of 1878-'9, of Georgia, page 144.

There is no such thing as res adjudicata in habeas corpus cases.

16 The Reporter, 830.

56 N. Y. R., 182. 3 Blotchford, 1.

Freeman on Judgments, §324 (2d edition.)

57 Am. Decisions 394, matter of Leary, 6 Abbot, N. C., 43.

In conclusion the Court is asked whatever may be the result of this case, to fix as far as may be under the facts now before them, the true interpretation of the clause of the Constitution under consideration, and of the act of 1793. If the harsher class of decisions is to be followed, the Constitution must become a terrible engine of oppression, easily put in operation by a vindictive man against an absent enemy; the highest officials of two States become but helpless tools in his hands for the execution of his vengeance, and one of the great grievances complained of in the Declaration of Independence will be revived.

It will be recollected that an affidavit before a magistrate is as potent as an indictment, to drag a citizen from his home and put him on trial in a strange land, away from his friends and his witnesses—and this, although he may be guiltless of the charge; however innocent, the law will not permit him to prove it until he reaches the demanding State. Happy is he if, in that distant land, he still has it in his power to do so, deprived as he must be of the evidence of all witnesses whose personal presence he cannot command.

Especially is this a hardship, if the crime of which he is accused, is cognizable by the law of his State. I have shown that in this case, as made by the papers accompanying the requisition, the alleged crime is punishable by the laws of Georgia.

Is this a case, then, contemplated by the Constitution?

If the facts make the accused amenable to the law of his own State, can he be extradited even if those same facts are such as to render him liable to be prosecuted under the law of another State.

So far as my researches have gone, this is yet before the Courts. 3 McLean 133-.

It is submitted that the spirit of the C prevent crime from going unwhipt of just is not necessary, the extradition laws do not apply.

The prosecutor swears in effect that while criminal proceedings could have been instituted against Roberts and Walton in Georgia, yet for his own convenience he chooses to prosecute in New York.

Record 14 and 15

Yet he, or his company have not hesitated to send an agent twice from New York to Georgia to secure his victim. Could not the witnesses, who, he says, are in New York, have been as easily sent? there were but two of them.

Will the Court aid this manifest attempt to persecute, not prosecute, by applying the extradition laws to a case, not within their spirit? Certain it is that the whole spirit and letter of American, nay, of Anglo-Saxon, law is against deportation for trial.

Is not the attempt now made in contravention of the IV and XIV amendments of the U. S. Constitution? To seize a person and take him into a foreign jurisdiction for trial—for an act punishable in his own State, would seem to be an "unreasonable seizure." And certainly one of his "immunities" under the law of his own State, is freedom from trial a second time for the same offense.

The Code of Georgia, §37, reads:

"This State claims jurisdiction of an offense committed on any of her boundary lines with other States for the county bordering on that part of the line where the offense was committed, and if doubtful as to which of two counties (as set forth in the preceding section), for either county, and will proceed to arrest, indict, try and execute, until such other State shall make a demand for the accused as a fugitive from justice; in which event the progress of the case shall be suspended by order of the Governor until the question of jurisdiction is settled."

Three things are inferable from this section:

1st. Where there is a doubt as to the jurisdiction, it is *prima facie* in Georgia.

2d. The accused will not be delivered up until this doubt is resolved in favor of the demanding State.

3. It is the duty of the Governor to examine into the question of jurisdiction and to refuse compliance with requisition unless it clearly appears that the demanding State has jurisdiction *to the exclusion of Georgia*. And, it is submitted, the warrant of arrest should, in all cases where the evidence accompanying the requisition raises this doubt, show on its face that the Governor has considered the question and decided it in favor of the jurisdiction of the demanding State.

Suppose the accused has been tried and acquitted (on other grounds than the want of jurisdiction), or convicted and punished before the requisition is made. Is he to be surrendered?

If it be said that the crime charged in the present case was not committed on the boundary line, the reply is the question involved is the jurisdiction of the demanding State and that of Georgia: the *locus in quo* is the means looked to, to determine the jurisdiction.

In the case before the Court, the alleged misappropriation of the bonds was clearly complete when they were delivered by Walton as Roberts' agent, and in obedience to the order of the latter, to the Express Company in Augusta, on February 12th, 1884. The Georgia crime was then complete. If it be a crime to write and send a telegram in New York to do an unlawful act in another State, we answer, no such charge is made, either as to the act itself, or as to the time it was done; the latter being quite as important in extradition cases as the former.

A State cannot always create statutory crime and then reclaim a violator of the statute under the extradition laws.

Spear, 355 (case of fugitive slave.)

Under the statute law of Georgia (Code 4659), a convict escaping from the penitentiary is guilty of a new crime for which he is to be tried and if found guilty punished, independently of the punishment inflicted for the crime of which he was first convicted. If the last case cited from Spear be law, he could not be extradited for the crime of escape. So, if New York chooses to make an act done in Georgia, criminal by the

laws of the latter State, also criminal by the law of New York, can New York demand the perpetrator as a fugitive from justice?

In supposing the possibility of some State enacting Draconian laws and discussing the propriety of its sister States surrendering their citizens to meet alleged violations of those laws, Mr. Spear says: "It will be time enough soberly to consider "this possibility, and provide for any evil that may be involved in it, when it becomes a fact of such an aggravated nature as to demand an adequate remedy."

Spear, 360.

That time has now arrived and the question is before the Court.

I leave it to their mature consideration, remarking that it is surely extra Draconian to punish the same act under the laws of two separate sovereignties.

W. W. MONTGOMERY,
Counsel for Appellant.

STATEMENT OF THE ACCUSED.

The Georgetown & Lanes Railroad Company, contracted with A. J. Twiggs & Co., a firm composed of A. J. Twiggs and Edward H. Walton, to build their Railroad. To enable them to raise the means, the company placed in the hands of the firm $325,000 of the first mortgage bonds of the road.

A. J. Twiggs & Co., contracted with the Bethlehem Iron Company to furnish the iron, which was to be paid for as delivered, with the bonds of the road. Iron was delivered under this contract from time to time, and the requisite amount of the bonds turned over, until the Bethlehem Iron Company became the owners of $145,000 of the bonds. These the Company deposited in the Bank of Augusta as a special deposit. Roberts was President and Walton Cashier of the Bank.

In the progress of the construction of the road, A. J. Twiggs & Co. needed some $15,000 in cash, and applied to Roberts to negotiate a loan of this amount for them, to be secured by hypothecation of a portion of the $325,000 bonds. The rest of the story the accused tells in his own language:

On the 15th of September, 1883, I wrote J. P. Billups & Co., of New York. I wanted to borrow $15,000 for a friend of mine by the name of A. J. Twiggs, Augusta Ga., a large railroad contractor, and would hypothecate $30,000 in bonds of the Georgetown & Lanes Railroad, of the State of South Carolina as security, and that I would also deposit my personal note for $15,00 as further collateral. They replied they were not able to effect the loan, as the bonds were not sufficiently known in the New York market, but would if agreeable, accept my draft on them at sixty days date, if that would answer the purpose. Consequently, after consulting E. H. Walton, who represented Twiggs, I drew my draft on them for the specified amount. They accepted my draft on presentation. When my draft became due, they allowed it to go to protest. I paid the draft when it was returned to me. I then demanded the bonds and my note. They after considerable correspondence acknowledged they had used the note and bonds as collateral security, but would pay their note and return the note and bonds. They used the note and bonds without my knowledge or consent. Sometime during the month of February, 1884, I went to New York to find out what disposition they had made of the note and bonds, as they had not returned them, and I could not get a satisfactory reply from them. When I arrived in New York, I called on Mess. J. P. Billups & Co. and learned through J. P. Billups, senior member of the firm, they had borrowed $15,000 from the Merchantile National Bank, of New York, and had hypothecated the note and bonds as collateral security. I called at the bank and found what he said was true. I told President St. Jonhs the bonds did not belong to J. P. Billups & Co., or myself. They belonged to A. J. Twiggs, of Augusta, Ga. He replied it mattered not with them who they belonged to. They were hypothecated in good faith to them by J. P. Billups & Co., and the bank would not give them up until satisfactory arrangements were made. I asked President St. John's the best terms he would give.

He replied J. P. Billups & Co. owed the bank a note for $15.000, and had hypothecated $30,000 of Georgetown & Lanes Railroad bonds to secure the note. He also stated the firm owed them an old balance amounting to about $1.904, which must also be arranged for. The best terms I could make with the President was I to give the bank my individual note for $16,000 at sixty days date and pay in cash $904 and hypothecate $10,000 more of the same bonds. I accepted the proposition and gave my individual note for $16,000 at sixty days, paid the $904 in cash and then telegraphed E. H. Walton at Augusta, to send $40,000 more Georgetown & Lanes Railroad bonds by the Southern Express Co. which he did. I never saw the bonds after they were received by the Merchantile National Bank, of New York, and never had anything to do with them as the bonds were in the hands of E. H. Walton, Cashier, and furthermore had no knowledge of them whatever and did not know they were the property of the Bethlehem Iron Company Works. E. H. Walton could have sent other bonds of the same kind that were in the vault just as well as there were over $50,000 bonds of the same kind. It was simply a mistake on his part. This accounts for the $40.000 of bonds which was alleged sometime ago by Frank H. Miller and published in his pamphlet that I had appropriated to my own use, when the truth of the matter is, I accepted J. P. Billups & Co. indebtedness without compensation. It will be perceived my object in asuming J. P. Billups & Co. liabilities, was to get control of the bonds and to keep the Merchantile National Bank, of New York, from sacrificing the bonds in their hands, if they had done so, it would have fixed a market price for the whole issue. I had every reason to believe the whole issue of bonds of the Georgetown and Lanes Railroad would soon be placed, as negotiations were then pending at figures that would have paid all the indebtedness of A. J. Twiggs contracted for building the Georgetown & Lanes Railroad including the J. P. Billups & Co. transaction. Again, A. J. Twiggs, was owing the Bank of Augusta, of which I was President, considerable amount of money at that time which made me more than anxious to protect as far is I could the value of the bonds. I am now charged with misappropriating these last bonds which E. H. Walton sent to the

Merchantile National Bank, of New York, entirely through mistake and as I before stated never saw or handled upon which a complaint has been made by the Grand Jury, of New York, to the Governor of said State, for an extradition warrant to the Governor of the State of Georgia, for my body to be delivered in New York. I think it an extremely hard case that all I have that is dear to me on this earth is now subject to the pending proceedings now in the Courts, all brought about by the misconduct of the late firm of J. P. Billups & Co. of New York, and the mistake of E. H. Walton, Augusta, Ga. I must say if I am legally responsible, I am not morally, and my conscience is clear of having committed any crime.

All of which is respectfully submitted.

W. S. ROBERTS.

AUGUSTA, GA., November, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 992.

WILLIAM S. ROBERTS,

vs.

PHILIP REILLY.

HABEAS CORPUS,

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, EASTERN DIVISION.

Motion to Advance by Appellee.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1885.

WILLIAM S. ROBERTS, RELATOR,
vs.
PHILIP REILLY.
No. 992.

STATE OF NEW YORK,
Executive Chamber.

To the Honorable The Supreme Court of the United States:

Whereas, Heretofore, and on April 15th, 1885, an appplication was made to me by the Honorable Randolph B. Martine, District Attorney of the City and County of New York, for a requisition on the Governor of the State of Georgia, for the arrest and surrender of one William S. Roberts, an alleged fugitive from the justice of the State of New York, he having been charged by indictment with the crime of grand larceny in the first degree, committed in said City and County of New York; and

Whereas, I did in pursuance of such request, so made as aforesaid, issue my requisition to the Governor of said State of Georgia, on April 22d, 1885, for the arrest and surrender of and the return to this State of the said William S. Roberts, and on the said last named date did appoint one Philip Reilly as the Agent of the State of New York, for the purpose of delivering the said requisition to the said Governor of Georgia, and of returning the said William S. Roberts to this State; and

Whereas, It appears to my satisfaction that my requisition so issued as aforesaid for the return to this State of the said William S. Roberts was duly honored by the said Governor of Georgia, and that he did in pursuance thereof issue his mandate, or warrant, for the arrest and surrender of the said William S. Roberts to the said Philip Reilly, duly appointed by me as aforesaid as agent of the State of New York, in the matter of said requisition; and,

Whereas, It appears to my satisfaction that the said William S. Roberts, through his agents or attorneys, has had recourse to the State Courts of Georgia and the Courts of the United States, by writs of *habeas*

corpus and otherwise for the purpose of having the warrant or mandate of the Governor of the said State of Georgia set aside, or for the purpose of regaining his liberty of which he was deprived in pursuance of the issuing of said warrant for his arrest and surrender as aforesaid; and,

Whereas, It appears to my satisfaction that an appeal has been taken and allowed to this Court from the judgment of the Circuit Court of the United States which affirmed the judgment of the District Court of the United States for the Eastern District of Georgia, which last-mentioned judgment dismissed the said writ of *habeas corpus* sued out by the said Roberts in said District Court; and,

Whereas, The people of the State of New York are the real parties defendant in this proceeding, the said Philip Reilly being the agent duly appointed by me, the Governor of the State of New York; and,

Whereas, It appears to my satisfaction that an appeal is now regularly on the docket of the said Supreme Court and yet pending undetermined, and that the said relator is still at liberty, and

Whereas, It is expedient that the said appeal be speedily heard and determined, and the questions raised herein decided by this Court, and

Whereas, I have been requested by the Honorable Randolph B. Martine, the District Attorney of the City and County of New York, as aforesaid, to approve of the proceedings heretofore had in the matter of the extradition of the said William S. Roberts from the State of Georgia, and to approve the application about to be made by him or on his behalf to the said Supreme Court of the United States to advance the said appeal, on the ground that the State of New York is a party to said appeal, through its said agent or representative, Philip Reilly, and also to dismiss the said appeal, and that justice may be speedily done.

Now, therefore, I, DAVID B. HILL, *Governor of the State of New York*, in view of the matters and things above set forth, do hereby approve of the proceedings heretofore had in the matter of the extradition of the said William S. Roberts, and do most respectfully petition this honorable Court that the said appeal in said matter be heard as a preferred cause, or that the said appeal be dismissed, in order that justice may be speedily done, and I do hereby authorize the said Randolph B. Martine, District Attorney as aforesaid, to take such proceedings as he may deem advisable in the premises to secure the enforcement of the requisition made by me as aforesaid and the due enforcement of the laws of this State.

Given under my hand and the Privy Seal of the State, at the Capitol in the City of Albany, this thirteenth day of [SEAL.] October, in the year of our Lord one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor:
WILLIAM G. RICE,
Private Secretary.

DISTRICT ATTORNEY'S OFFICE,
City and County of New York.

IN THE SUPREME COURT OF THE UNITED STATES.

WILLIAM S. ROBERTS, RELATOR,

vs.

PHILIP REILLY.

October Term, 1885.

I, RANDOLPH B. MARTINE, District Attorney in and for the County of New York, do hereby designate and appoint Daniel Lord, Jr., Counsellor at Law, as Special Counsel to represent me in the above entitled action and in any motions and proceedings therein, with authority to associate with him such other counsel as he may consider essential or necessary.

Dated at New York City, October 14, 1885,

RANDOLPH B. MARTINE,
District Attorney in and for the County of New York,
State of New York.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

WILLIAM S. ROBERTS, APPELLANT	HABEAS CORPUS.
vs.	Appeal from Circuit Court U.S. Southern District Georgia.
PHILIP REILLY.	Eastern Division.

Comes now the appellee and respectfully moves the Court to advance the case for argument at this term

1. Because the State of New York, through him as the agent appointed by the Executive thereof, is a party.

2. Because, under the special and peculiar circumstances of the case, the appellant is, until the hearing of this appeal, free from all criminal proceedings in New York and Georgia, under indictments found against him in each State, which charge a violation of the penal laws thereof.

STATEMENT.

On the 10th of April, 1885, an indictment for grand larceny was found by the Grand Jury of the City, County and State of New York, against William S. Roberts, for hypothecating in the Mercantile Bank of the City of New York, as his individual property, bonds left on deposit in the Bank of Augusta, Georgia, by the Bethlehem Iron Company, for which, Roberts as President of said Bank, gave his receipt at the time of deposit.

On the 22d of April, 1885, the Governor of New York, under the privy seal of the State, made his requisition, in conformity to law, upon the Governor of Georgia, for the apprehension of Roberts, and on the same day, under the privy seal of the State, authorized and empowered Philip Reilly to take and receive from the proper authorities of the State of Georgia, the said Roberts, a fugitive from justice, and convey him, at the exclusive cost of the County of New York, to the State of New York, there to be dealt with according to law.

The Governor of Georgia issued his Executive warrant, under which Roberts was arrested by the Sheriff of Richmond County, and delivered to Reilly April 26th, 1885; Roberts sued out immediately a writ of *habeas corpus* before the Judge of the Superior Court of Richmond County, Georgia, and pending the hearing thereof, applied to the Governor of Georgia, April 28th, 1885, to revoke the warrant, in which application he states he was in the

City of New York in February and April, 1884, and had transactions with the Mercantile Bank of New York with reference to the bonds, but denied fleeing from the State of New York, or departing therefrom to avoid arrest.

This application was refused by the Governor of Georgia, and the hearing proceeded under the writ of *habeas corpus*, before the State Judge, lasting several days. Prior to a decision by this Judge, application was made by Roberts to the District Judge of the United States for the Southern District of Georgia, for a writ of *habeas corpus* against Reilly, which was issued, but not served until the day upon which the State Judge rendered his decision, and remanded Roberts into custody. Reilly produced the relator before the United States Judge, who ordered him into the custody of the Marshal pending a hearing, and upon a hearing, remanded him into Reilly's custody, when he allowed an appeal from his decision to the Circuit Court, and admitted Roberts to bail pending the appeal under a bond, payable to the United States Marshal. Roberts, after enlargement, was indicted by the Grand Jury of Richmond County, and State of Georgia, May 11th, 1885, charging him with embezzlement, and larceny after trust, of the capital of the Bank of Augusta, of which he was President, secreting the same by false entries, and failing to pay over the same to the Bank; continuing to transact business as the President of an Insolvent Bank; and for perjury in making false returns as Presdient of the Bank, to the Governor of the State of Georgia, as to the condition of the Bank.

Under each of these indictments bench warrants were issued, and the Sheriff of the County of Richmond made his entry of arrest of Roberts, and as having placed him in charge of his Deputy.

Thereafter, upon the hearing of the appeal, the judgment of the District Judge was affirmed by the Circuit Court, but judgment staid thirty days on account of the physical condition of the relator. Before this expired, Roberts made another application to the Governor of Georgia for the suspension of his warrant of extradition, because of these criminal proceedings in Georgia, he claiming that he should be held to answer the charge of violating the laws of the State of Georgia before his removal from the limits of that State. This application, after a hearing before the Governor, and after his taking the advice and opinion of the Attorney General of the State, was refused June 12th, 1885, and thereafter, on the 20th of June, 1885, this appeal from the decision of the Circuit Court was allowed to this Court.

Since this appeal, Reilly has made a report of all this action to the Governor of New York, and by Executive sanction and order, in behalf of the State of New York, this motion to advance is made in this Court.

ABSTRACT OF THE LAW.

The Constitution of the United States ordains: Art. 3, Sec. 2, Par. 2: That "the Supreme Court shall have appellate jurisdiction both as to law and fact. with such exceptions, and under such regulations as the Congress shall make."

Art. 4, Sec. 2, Par. 2: A person charged in any State with treason, felony, or other crime who shall flee from justice, and be found in another State, shall on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

The Act of Congress February 12, 1793, Revised Statutes 5278, enacts that "Whenever the Executive authority of any State or Territy demands any person as a fugitive from justice, of the Executive authority of any State or Territory to which such person has fled and produces a copy of indictment found * charging the person demanded with having committed treason, felony, or other crime, * it shall be the duty of the Executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, * * and cause the fugitive to be delivered to such agent when he shall appear."

The Act of Congress of February 5, 1867, 14 Statutes 385-386 enacts as to the several Courts of the United States and Justices thereof, *in addition to the authority already conferred by law*, shall have power to grant writs of *habeas corpus* in all cases where any person may be restrained of his or her liberty in violation of the Constitution or of any treaty or law of the United States.

* * * * * * * * *

From the final decision of any Judge, Justice or Court inferior to the Circuit Court, an appeal may be taken to the Circuit Court of the United States for the District in which said cause is heard, and from the judgment of said Circuit Court to the Supreme Court of the United States, on such terms and under such regulations and orders, as well as for the custody and apppearance of the person alleged to be restrained of his or her liberty as for sending up to the appellate tribunal a transcript of the petition, writ of *habeas corpus*, return thereto, and other proceedings, as may be prescribed by the Supreme Court, or in default of such, as the Judge hearing such cause may prescribe.

The Act of March 27, 1868, 15 Statutes 44, repeals so much of the Act of February 5, 1867, as authorizes an appeal from the judgment of the Circuit Court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court on appeals which have been or may hereafter be taken. The Revised Statutes of the United States sets out this Act in Sections 765-764, as follows:

"From the final decision of any Court, Justice, or Judge inferior to the Circuit Court, upon an application for a writ of *habeas corpus*, or upon such writ when issued, an appeal may be taken to the Circuit

Court for the District in which the cause is heard. From the final decision of such Circuit Court an appeal may be taken to the Supreme Court in the cases prescribed in the last clause of the preceding section."

Act of March 3, 1885, 437, amends Section 764, so as to read as follows: "From the final decision of such Circuit Court an appeal may be taken to the Supreme Court in the cases described in the preceding section."

ARGUMENT.

1. This motion is made under the provisions of the Act of June 10th, 1870, 16 Statute, 176, entitled "An Act giving priority to certain cases, to which a State is a party in the Courts of the United States," now found in section 949 Revised Statutes United States, which enacts that in all suits and actions wherein a State is a party, * * it shall be the duty of any Court in which such cause may be pending on sufficient reason shown, to give such cause priority over all other civil suits pending in such Courts between private parties. The Act, when codified in section 949 Revised Statues, enacts when a State is a party, such State shall be entitled on sufficient reason to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such Court between private parties.

In Miller vs. State, 12 Wallace, 159, December term, 1870, a motion was made to advance a case under this Statute of June 30th, 1870, and refused because the State was not a real party; the Court say, however, page 162, "if the fact was so it may be conceded that the cause ought to be advanced."

In Ward vs. State, 12 Wallace, 163, the motion of a defendant in a criminal case was refused, as the motion was not filed by the State, nor by a party claiming under a law of the State.

In 93 United States 12 Hoge, Comptroller General, et. al., vs. The Richmond & Danville Railroad Company, at October term, 1876, which was a revenue case, where a motion was made under the Revised Statutes, says on page 2, "the Court must determine what is sufficient reason for this preference under all the circumstances of the case."

In setting forth the defects of this motion, the Court say "no disputed principle of law affecting any other case is, so far as we can discover from the record presented for our determination." From these cases, therefore it appears that the motion is proper, if this Court considers sufficient reasons exist to grant it?

2. This motion is also made under the provision of Rule 26, Subdivision 6 and 7, reported in 108 United States Reports, 589, and it is submitted that upon the undisputed facts, the case is one so special and peculiar in its circumstances, as to justify a speedy hearing by this honorable Court.

The order allowing the appeal supersedes the judgment heretofore had in the case remanding the appellant into the custody of Reilly, the agent of the State of New York, until the final decision

of the Supreme Court can be had in the case, and orders that the bail of the said Roberts, retain him in their custody, and produce him to answer any decision the Supreme Court may render in the case.

This Court has ruled in Taylor, vs. Taintor, 16 Wallace Reports, 371, that "when bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment."

"They may exercise their rights in person, or by agent, they may pursue him into another State."

"The seizure is not made by virtue of new process"

"The rights of the bail in civil and criminal cases, are the same."

* * * * * * * * *

"If the demand had been made upon the Governor of Connecticut, he might properly have declined to comply until the criminal justice of his own State had been satisfied. This right, it is not to be doubted, he would have exerciesd."

"Though beyond the jurisdiction of Connecticut, he was still, through his bail, in the hands of the law of that State, and held to answer there for the offence with which he was charged."

The language of the Constitution, Article 4, section 2 is, "shall, on demand, be delivered up."

The Act of Congress, 1798 Revised Statutes, 5273, makes it the duty of the Executive of the State to which the fugitive has fled, to cause the fugitive to be delivered to such agent when he shall appear, but in Taylor, vs, Taintor, 371, this Court say "the duty to surrender is not absolute and unqualified. It depends on the circumstances of the case," and on page 373, say "the Act of the Governor of New York, in making the surrender, was not the Act of the law within the legal meaning of those terms, but in view of the law was the Act of McGuire himself."

And again, whatever the decision of the Governor, "if the proceedings were regular, it would have been conclusive, there could have been no review, and no inquiry going behind it."

Finally in drawing the distinction between a surrender under a treaty, and one between the States, the Court say, page 375, "in making the order of surrender, all the States through their constituted agent, the general Government are represented and concur, and it may well be said to be the Act of each and all of them. Not so here."

From these extracts it appears that the Constitution means an immediate delivery in the discretion of the Governor, upon whom the demand is made.

Wales, vs. Whitney, 114 United States, 564, is the first appeal heard in this Court since the Act of March 3d, 1885, amending section 764 Revised Statutes, there the relator was under charges before a Court Martial, ordered by the Secretary of the Navy, "which Court was adjourned from time to time to await the result of the proceedings in *habeas corpus*." And upon an application for an

original writ of *habeas corpus*, this Court suggested that the appellate jurisdiction in such cases had been restored, and upon such suggestion being acted upon, heard the appeal pending the then term of the Court.

Since the repeal of the Act of February 5th, 1877, by the Act of March 27th, 1868, held valid by this Court in ex parte, McCardle, 7 Wallace, 506, down to the restoration of appeal under the Act of March 3d, 1885, this Court has had before it no appeals in *habeas corpus* cases, except ex parte, Reggel, 114 United States Reports, 642, which was under a different section of the Revised Statutes, 702, allowing appeals from the Supreme Court of a Territory.

The history of the Amendment of March 3, 1865, allowing appeals is set forth in the reports of the meetings of the American Bar Association of 1883. On page 267 of Judge Thompson's paper he states: "Whenever a case has passed to judgment in a State tribunal if the defendant thinks he is imprisoned contrary to the Constitution of the United States, an Act of Congress or a public treaty, he should be put to his appeal to the highest Court of his State to which the question is examinable, and then by writ of error to the Supreme Court of the United States."

In the report of 1884, when the Association were taking action upon this paper of Judge Thompson, before quoted from, they say, page 25: "But the present condition of the docket of this Court, which has already been fully brought to the attention of the Association admonishes us that appeals of this nature which, if granted, would be eagerly sought whenever the prisoner had friends or money, would produce more evils than they would cure." Further they say, "*Habeas corpus* cases necessarily require prompt and summary action and decision, and it would be of great value to the administration of this particular branch of justice, if by a common consent on the part of bench and bar the boundaries and limitations of State and Federal jurisdiction could be more definitely determined."

In 3 McArthur, 426, in case of George Taylor, it was held that appeal would lie from the decision of a Justice to the general term of the Court at the instance of the Attorney-General.

In 2 Woods, 428, ex parte Dock Bridges, an appeal was allowed at the instance of the Attorney-General from the decision of the District Judge to the Circuit Court, and the record in the case shows that it was to the term then in session.

In Robb vs. Connelly III U. S. R., 624, October term, 1883, this Court say "that, so far as the Constitution and laws of the United States are concerned, it is competent for the Courts of the State of California or for any of her Judges having power under her laws to issue writs of *habeas corpus*, to determine upon writs of *habeas corpus* whether the warrant of arrest and the delivery of the fugitive to the agent of the State of Oregon were in conformity with the Statutes of the United States; if so, to remand him to the custody of the agent of Oregon." Page 639.

In re Sun Hung and Si Yee, U. S. Circuit Court of California, Aug. 24, 18 5, Chicago Legal News September 12, 1885, the question of an appeal from a decision in *habeas corpus* to this Court was passed upon, and held to be absolute and a matter of right without discretion upon the part of the Judge below to refuse it, and that this is the effect of the law in all cases of *habeas corpus* arising under the Chinese restriction law.

The learned Judge, in commenting on this case, says: "This question on the construction of the Statute as to a right of appeal on a mere question of fact was not suggested, nor did it occur to me under the broad language of the Statute before allowing the appeal. It may be that the Supreme Court may feel justified in limiting the appeal to questions of law. I suggest the point without expressing a decided opinion as to how it should be ultimately decided."

In exparte, Crouch 112 U. S. R. 178, this Court say, on page 180, "All questions which may arise in the orderly course of the proceedings against him are to be determined by the Court to whose jurisdiction he has been subjected, and no other Court is authorized to prevent it."

"If in this determination errors are committed they can only be corrected in an appropriate form of proceeding for that purpose." "The office of the writ of *habeas corpus* is neither to correct such errors nor to take the prisoner away from the Court which holds him for trial for fear if he remains they may be committed."

In Georgia, a decision on *habeas corpus* is subject to review by the Supreme Court, 24 Georgia, 379, Livingston, vs. Livingston; and 62 Georgia, 598, Perry, vs. McLendon; and the judgment is a bar to a second writ as to all matters which could then be plead in issue, 62 Georgia, 603, same case.

There, no supersedeas is allowed in such cases, Irwin, vs. Jackson, 34 Georgia, 101, and if a bond is taken pending a review of a decision remanding the relator, no recovery can be had thereon, McLendon, vs. Smith, 68 Georgia, 38.

Hence, it appears that in anticipation of an adverse decision from the State Court after the argument had continued several days, resort was had to the United States Court without dismissing the other writ, thus taking chances of both tribunals, and preventing by application to the Federal Court the enforcement of the judgment of the State Court.

To have a speedy adjudication as to the validity of such action, is of great importance under the Constitution, and necessary to the prompt administration of public justice.

3. In 114 United States Reports, 223 Lamar, executor, vs. Micou, administrator, this Court say the law of any State of the Union "is a matter which the Courts of the United States are bound to take notice of without plea or proof." From the laws of Georgia it appears that the Bank of Augusta, was incorporated March 21st, 1866; 95, amended December 21st, 1866; 77, August 24th, 1872; 95, September 11th, 1882; 165. That by the Act of September 26th, 1879, section 2, it was authorized to carry on the business of a Bank of Deposit.

That under the Code of Georgia, Section 4427, every presumption is against an officer of a bank, and under Section 4428 every bank insolvency is declared fraudulent. Under Section 4428 (a) penalty is imposed for not paying depositors, and under Section 4429 transfer of stock, effects, &c., unless made to an innocent purchaser are declared fraudulent.

That under Section 55 of the same Code it is enacted, "If any person demanded as a fugitive from justice is at the time of such demand under prosecution for an offence against the laws of this State, the Governor shall suspend his delivery until the issue is determined as to his guilt, and if condemned until he shall have suffered the penalty of the law imposed."

Section 9 of this Code defines the comity of the State as that provided by the Constitution of the United States, and Section 3751 declares what matter shall be judicially recognized.

The Supreme Court of Georgia, in Johnston vs. Riley, 13 Ga. Reports, 97, when the question first arose in that State, say on page 133. after the production of a copy of an indictment found in another State charging the person so demanded as having committed a crime against the laws, duly certified and authenticated by the Magistaate of the State from whence the person so charged fled, "the Executive or the State upon whom the demand is made for the surrender of the fugitive is not authorized under the Constitution and the laws enacted to carry into practical effect that special provision of it to look behind the indictment or affidavit in which the crime against the State is charged, and inquire whether by the laws of his own State the facts alleged would constitute a crime in that State." And again in the same case, "Such penal enactments as might be wholly useless in some of the States are indispensably necessary in others for the protection of property and the welfare of the State."

Under these laws and this decision the Executive of Georgia having issued his warrant based upon a requisition presented to him prior to indictment found in the State of Georgia has yielded up the custody of the accused, and now awaits the action of the State of New York before proceeding further. See Exhibit A hereto.

4. This motion, therefore, presents for the consideration of this Court an application by the State of New York in her own behalf, and by comity of the State of Georgia, to enable a speedy adjudication to be had of the indictments found against the appellant in each State, and inasmuch as the case of the appellant presents for determination, solely a question of fact as to whether he is or is not a fugitive from the justice of the State of New York, which has twice been decided against him by the Governor of Georgia and three times by the State and Federal tribunals, it is respectfully requested that the motion to advance be set down for a hearing at such time as the Court may seem fit to designate.

Respectfully submitted.

RANDOLPH B. MARTINE, District Attorney.
DANIEL LORD, JR.,
W. E. DOSTER,
FRANK H. MILLER,
Attorneys for Appellee.

EXHIBIT A.

Executive proceedings had not before the Judiciary.

EXECUTIVE DEPARTMENT,
ATLANTA, GA., April 25, 1885.

Upon the requisition of the Governor of New York an Executive warrant was this day issued for the arrest of William S. Roberts, charged with the offence of grand larceny in the first degree, and Philip Reilly was appointed agent to receive and convey him to said State of New York, having jurisdiction of his crime.

HENRY D. McDANIEL, Governor.

By the Governor:

H. E. W. PALMER, Secretary Executive Department.

GEORGIA,
RICHMOND COUNTY.

To His Excellency H. D. McDaniel, Governor of said State:

The petition of William S. Roberts showeth that he is a citizen of said State, resident in said county, and that on Sunday, the 26th day of April, 1885, he came from his home near the city of Augusta, in said county, to said city to visit a sick son, and while so engaged he was arrested by Wilberforce Daniel, the sheriff of said county, under an Executive warrant issued by your Excellency upon a requisition of the Governor of the State of New York, charging your petitioner with grand larceny in said last named State and by said sheriff delivered to Philip Reilly, the agent appointed by the State of New York, to carry him to said State, and he has ever since said arrest and delivery been in the custody of said Philip Reilly and now awaiting a hearing before the Hon. H. C. Roney, Judge of Superior Court of said county of Richmond, of an application for his discharge under a writ of *habeas corpus*, which said hearing is set for to-morrow morning, April 28, 1885.

Your petitioner further shows that no authority for his said arrest, except the warrant aforesaid has been shown him, and he is therefore not informed by the record as far as seen by him what are the facts upon which said charge is based, but he is informed and believes that said prosecution is founded upon a transaction which occurred in the city of New York during the month of February or April, 1884, and grows out of the sending from said city of Augusta to the Mercantile Bank of New York of certain bonds deposited in the Bank of Augusta, of which your petitioner was President.

Your petitioner further shows that he is unable to say whether said transaction was in February or April, 1884, if at either time, but he was in said city of New York at both times, and was also there in August, 1884, and had transactions with said Mercantile Bank with reference to said bonds, and had no intimation then nor since until his arrest that he was charged with any crime.

Your petitioner further shows that he did not flee from said State of New York, nor did he depart therefrom to avoid arrest or punishment, but returned as any other person would do to his ordinary and permanent residence in said county of Richmond, where he has ever since been, and he therefore submits to your Excellency that he is not and has not been a fugitive from justice in contemplation of the Constitution and law. In support of this he begs to refer your Excellency to Hurd on *Habeas Corpus*, Second Edition S. P. 606. Title, "The Flight of the Accused," Bouvier's Law Dictionary 3 McLean's Reports U. S. Cir. Ct. 121, 32 American Reports 116.

Your petitioner further shows that while he is not informed by the record, he is advised and believes that said criminal prosecution has been instituted in said State of New York by the Bethlehem Iron Works a corporation of the State of Pennsylvania, that said Bethlehem Iron Works has a suit now pending in the Superior Court of said county of Richmond against your petitioner and other parties for said bonds, and your petitioner verily believes that the said proceedings have been instituted and are now being carried on for the benefit of said company, and to coerce your petitioner or his friends to the payment of a debt claimed by said company, which is an abuse of legal process and upon this your petitioner begs leave to refer your Excellency to Rorer on Inter State Law, T. P. 222.

Your petitioner is assured that your Excellency issued said warrant upon an ex parte statement and without a full knowledge of all the facts, and would not have done so if you had been fully informed.

That he is now deprived of his liberty and is in danger of being torn from his family and friends and carried among strangers and while he is assured that he will finally be acquitted, he must in the meantime endure great hardship and oppression.

Your petitioner therefore prays Your Excellency to suspend or arrest the enforcement of said warrant until the facts can be investigated and your petitioner protected in his rights as a citizen of this commonwealth, and in support of Your Excellency's authority so to do and for precedent, he begs leave to refer to Hurd on Habeas Corpus First Edition, T. P. 613; Second Ed. 218, and cases cited, and Black vs. Carrington, 32 Amr. R., Parts 345, and that your petitioner may be permitted, by counsel, to appear before Your Excellency at such time as you may fix to be heard in the premises.

And your petitioner will ever pray, &c.

HOOK & MONTGOMERY,
TWIGGS & VERDERY,
and J. C. C. BLACK,
Attorneys for W. S. Roberts.

GEORGIA, }
RICHMOND COUNTY. }

Personally comes before me the above named petitioner, Wm. S. Roberts, who being sworn says the facts stated in the foregoing petition are true.

WM. S. ROBERTS.

Sworn to and subscribed before me this 28th day of April, 1885.
E. F. VERDERY, Not. Pub. R. C. Ga.

ATTORNEY GENERAL'S OFFICE, ATLANTA, GA., June 11, 1885.

His Excellency, Henry D. McDaniel, Governor, etc.—The application of W. S. Roberts for a suspension of Executive Warrant issued for his arrest, in obedience to a requisition from the Governor of New York, is based on two grounds, viz.:

1. Because it is claimed that the prosecution on which the extradition proceedings are founded was not instituted in good faith, but to coerce the payment of a debt.

2. Because, since the arrest of Roberts by virtue of the Executive Warrant issued as stated, the Grand Jury of the County of Richmond, in this State, has found three special presentments, each charging him with a felony, and that bench warrants have been issued for his arrest to answer these presentments. As to the first ground, it is sufficient to state that there is no evidence of its truth. What is meant when it is charged that a criminal proceeding is being used to coerce the payment of a debt, is that it is not instituted bona fide for the purpose of bringing the accused to trial, but to be held *in terrorem* over him until he settles with the prosecutor, and is *then* to be abandoned. There is no evidence whatever that this latter is the purpose of the prosecution in this case. If it be necessary, as claimed, to convict Roberts of the larceny of the bonds he is alleged to have misappropriated, or attempt to do so, before they can be recovered from the purchaser, this instead of establishing the point insisted on, tends to prove the contrary. Mr. Spear, in his work "On the Law of Extradition" (p. 434), referring to the refusal of Governor Rice, of Massachusetts, to comply with the requisition of the Governor of South Carolina, in the case of Kimpton, on the ground "that the object in procuring the indictment does not appear to be for the purpose of trying Kimpton for the crime charged against him, but for a different purpose," says: "This in effect charged South Carolina with fraud as to the motives of the indictment and prosecution, and made Governor Rice's opinion in respect to those motives a rule of law for his action. Was he justified in assuming this fraudulent intention, and then, on this basis, refusing to comply with the law of Congress? The proper answer to this question is in the negative. He had no right to impeach or assail the verity of the authenticated record before him on the ground that the prosecution was inspired by improper motives, or had an

object different from the one that was apparent on the face of the papers."

Mr. Wharton lays down the same doctrine. (See Wharton's Criminal Pleading and Practice, 8th Edition, Section 34.) Oviously, such motives should not be imputed on presumption, but only when they are satisfactorily proved to exist.

As to the second ground, the facts are that the requisition from New York was presented, and the Executive Warrant in compliance therewith was issued on the 25th day of April, 1885. Roberts was arrested on the warrant so issued, and delivered to the agent of the State of New York, and had been, after a hearing on a writ of *habeas corpus*, remanded by Judge Roney to the custody of the New York officer, before either of the special presentments was found against him by the Grand Jury of Richmond County—all the presentments having been returned into Court by that body on the 11th day of May, 1885. It may be stated farther that after Judge Roney's decision was rendered, Roberts sued out another writ of *habeas corpus* before Judge Speer, Judge of the District Court of the United States for the Southern District of Georgia, who held, as Judge Roney had done, that he was not illegally restrained of his liberty, and, on the application of his counsel, ordered him into the custody of the United states Marshal, pending an appeal to Mr. Justice Woods, of the Supreme Court of the United States. On the hearing before Mr. Justice Woods, the decision of Judge Speer was affirmed.

The power of the Governor to suspend or revoke a warrant of extradition, for sufficient legal cause, is not doubted. The question is, do the facts stated furnish such cause? Section 55 of the Code provides:

"If any person, demanded as a fugitive from justice, is at the time of such demand under prosecution for an offense against the laws of this State, the Governor shall suspend his delivery until the issue is determined as to his guilt, and if condemed, until he shall have suffered the penalty of the law imposed."

The laws of Alabama, Iowa, Indiana, and several other States contain provisions similar to the section of our Code cited on this subject, and it is a somewhat significant fact that all of them, without exception, make the duty of delivery to depend on whether there is a prosecution pending at the time the fugitive is demanded. (See Speer on the law of extradition, pp. 445, 637, 649, 658, 659, 669, 671, 680, 682, 687, 690, 696, 702, 704, 706). If a subsequent prosecution against the person accused furnishes a sufficient legal reason for the suspension of the delivery under an extradition warrant, it is a little remarkable that none of the States which have legislated on this subject have incorporated such a provision in their Statutes.

But the solution of the question is not left to conjecture. The law governing it seems to be well settled. Mr. Speer, in the work already cited, speaking of the decision on this point, says:

"The legal principles involved in these decisions is that, where jurisdiction has already attached to a case, it is in the absence of

any provision to the contrary to be deemed exclusive until it has performed its function. * * * Hence the demand for the delivery of a fugitive criminal does not abrogate or postpone a lawful jurisdiction that has been in force against him for an offence committed in the State or Territory to which he has fled, and on which the demand is made." (Speer on the law of extradition, p. 444).

The same principle is ruled in 26th Wallace 371, and in 4th Zabriskie 634. In the last named case the Court says: "If in point of fact the prisoner had first been arrested on the requisition, the civil process would have undoubtedly been too late, for I should then have considered him as a prisoner of that State, and not liable to be taken from her custody by any process issued out of our Courts."

The only precedent in opposition to these authorities is the order of Gov. Smith in the West case, where the Governor suspended his warrant because three days after it was issued the grand jury of Fulton county charging West with a criminal offence under the laws of the State. The exact facts of that case do not appear on the records of the Executive Department nor from the evidence submitted in connection therewith. All that appears is that three days after the warrant was issued the indictment was found by the grand jury, West being at the time in Augusta, where the application for the writ of *habeas corpus* sued out for him was being heard. It may be that Governor Smith had evidence before him showing that the indictment was pending before the grand jury at the time the requisition was made. But it is sufficient to state that this was an exceptional case, and is contrary to the current of authority on the subject. It is fair to presume that there were reasons for Governor Smith's action which do not appear. It has been argued by eminent counsel for Mr. Roberts that it is the duty of the Governor to see that the laws of this State are faithfully executed, and it has been argued with great eloquence and ability that, for this reason, he should not allow Roberts to be taken out of the jurisdiction of Courts of this State until he has been tried on the special presentments pending against him in the county of Richmond. True it is that it is the Governor's duty to take care that the laws are faithfully executed, but this duty applies to the law concerning the extradition of fugitives from justice, as well as to the other laws of this State. In the language of the Supreme Court in the case of Johnston vs. Riley (13th Ga. R. 99), "it is made his imperative duty under the supreme law of the land, which he has sworn to support, to surrender up such fugitives to the authorities of the State whose laws have been violated, having jurisdiction of the crime."

I have considered this application for the suspension of the warrant of the extradition just as if it had been made by the duly constituted authorities of Richmond county, instead of by Roberts, the person accused. I feel constrained by my loyalty to the law to advise your Excellency that no sufficient legal reason has, in my

judgment, been furnished for the suspension of the Executive warrant heretofore issued in this case. Very respectfully,

[Signed] CLIFFORD ANDERSON,
Attorney-General.

EXECUTIVE DEPARTMENT,
Atlanta, Ga., June 12th, 1885.

After duly considering the application of W. S. Roberts, for the suspension of the warrant of extradition against him, issued in compliance with a requisition from the Governor of New York, and after consultation with the Attorney General of the State;

It is ordered, that said suspension applied for be and is hereby denied.

HENRY D. McDANIEL, Governor.

By the Governor:
HOWARD E. W. PALMER,
Secretary Executive Department.

EXECUTIVE DEPARTMENT,
STATE OF GEORGIA,
ATLANTA, GA., Sept 14, 1885.

I, Howard E. W. Palmer, Secretary of the Executive Department of the State of Georgia, do hereby officially certify that the printed matter hereto annexed is a true and correct copy of the Executive Order issued June 12th, 1885, and of the opinion of the Attorney General as delivered to the Executive and referred to in the said Executive Order as appears of record and file in said department.

Given under my hand and seal of the Executive Department of the State of Georgia, at the Capitol in Atlanta, Georgia, the day and year first above written.

HOWARD E. W. PALMER,
Sec'y Ex. Dep't.

[L. S.]

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

No. 992.

WILLIAM S. ROBERTS *vs.* PHILIP REILLY.

APPELLEE'S ANSWER TO APPELLANT'S OBJECTION TO STATEMENT OF FACT.

1. Exhibit A is not claimed to be a part of the record, but is shown by a copy duly certified, filed with the clerk, as matter outside of the record, which this court will consider on a motion to advance.

Dakota Co. *vs* Gladden, 113 U. S., 222.

2. The other statements objected to, as far as understood, appear in the record, page 40, where W. W. Montgomery, to show service on appellee, says under oath: "That said case has been before the judiciary of the United States for the southern district of Georgia, in one form or another three times, and before the Governor of Georgia once." Also on same page 40 where J. S. Hook says under oath as to the appearance of B. Wright, Esq.: "That said Wright appeared as counsel for Philip Reilly on two occasions in the argument of the *habeas corpus* case referred to in the above citation—once before the State and once before the Federal authority."

RANDOLPH B. MARTINE,
District Attorney, New York County.
DANIEL LORD, JR.,
W. E. DOSTER,
FRANK H. MILLER,
Attorneys for Appellee.

1885

116-80

No. 992.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

WILLIAM S. ROBERTS

vs.

PHILIP REILLY.

Habeas Corpus, on Appeal from the Circuit Court of the United States, Southern District of Georgia—Eastern Division.

BRIEF OF

RANDOLPH B. MARTINE,
District Attorney.
DANIEL LORD, JR.,
WM. E. DOSTER,
FRANK H. MILLER,
Attorneys for Appellee.

No. 992.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

WILLIAM S. ROBERTS, Appellant,	Habeas Corpus, on Appeal from the Circuit Court of the United States, Southern District of Georgia—Eastern Division.
vs.	
PHILIP REILLY.	

APPELLEE'S STATEMENT.

On the 10th day of April, 1885, an indictment for grand larceny in the first degree, was found by the Grand Jury of the State, County and City of New York, against William S. Roberts, and Edward H. Walton. A certified copy of this indictment, with affidavits alleging the facts to be established, was presented to the Governor of the State of New York, by the District Attorney of New York county, April 14th, 1885. The Governor certified the same was authentic and duly authenticated according to law (page 7), and a requisition was made by him April 22, 1885, for William S. Roberts, on the Governor or Georgia. The Executive of that State issued his warrant April 25th, 1885 (pages 19 and 20), and Roberts was arrested by the Sheriff of Richmond county, Georgia, April 26th, 1885, and delivered to Philip Reilly, who had been appointed by the Governor of New York, April 22d, 1885 (page 23), agent of that State, to receive him and convey him at the exclusive cost of the County of New York, to the State of New York, there to be dealt with according to law.

On April 26th, 1885, a writ of habeas corpus was sued out by Roberts, before the Judge of the Superior Courts of the Augusta Circuit. The ground of alleged illegality being detention by Reilly, without any copy of the indictment obtained against him, which ground was amended on the hearing (page 21), alleging that the Governor's warrant shows on its face that the copy indctment upon which the warrant was founded, was not properly authenticated, that the accused was not a fugitive from justice, and no evidence of the fact accompanied the warrant, that the crime, if any, was committed in Georgia, and that the extraditon was a cloak for the purpose of extorting money for the payment of an unjust debt, for which suit was pending in Georgia. (Page 21.)

The case was adjourned, and hearing continued from day to day, until May 1st, the Judge stating in his decision, "*I have opened the door*

wide and let in all the evidence before the Governor and other evidence on the trial" (page 23), and the accused was remanded to the custody of Philip Reilly, agent of the State of New York.

On the 30th day of April, 1885, before a decision of the State Court was announced, and pending the argument in the case, and without dismissing the writ, Roberts petitioned the Honorable Emory Speer, Judge of the United States District Court, of the Southern District of Georgia, for another writ of habeas corpus, no reference being made to the proceedings in the State Court. This was served May 1st, 1885, and the relator produced May 2, 1885, before the District Judge, when the accused was ordered by Judge Speer to be held in the custody of the Marshall, pending the hearing (page 5), and on the 4th of May, 1885, he was, by order of said Judge, remanded into the custody of Reilly, and the writ dismissed. (Page 6.)

The alleged grounds of illegality set forth in this petition, as amended, were

1st. A failure to furnish petitioner with a duly authenticated copy of the indictment on which the Executive warrant issued.

2d. Because on the face of the Executive warrant the copy indictment is shown to not have been duly and legally authenticated.

3d. That it was not true in fact that he was a fugitive from justice.

4th and 5th. That it did not appear when and where the indictment was found.

6th. That the indictment does not charge any crime committed.

7th. That it nowhere appears from the papers accompaning the demand upon the Governor of Georgia, that the relator was personally within the limits of the State of New York at the time when the alleged crime is said to have been committed, and it was committed in Georgia.

8th. It nowhere appears that any evidence was before the Governor of New York at the time demand, that the relator was personally within the limits of New York, when the crime is alleged to have been committed.

The return to this writ set forth as the authority for detention, the Executive warrant of the Governor of Georgia, and the Executive authority from the Governor of New York to receive the accused, with a transcript of the record duly authenticated from Richmond Superior Court, showing that on the 26th of April, 1885, he was served with a writ of habeas corpus, issued by the Judge of the Superior Courts of the Augusta Circuit, of which circuit Richmond county was a part, and the decision of this Judge rendered May 1st, 1885, which was a final judgment of a Court of competent jurisdiction. (Pages 25 and 26.)

That at the sueing out of this second application, he held Roberts subject to the order of said Judge.

After the judgment of the United States District Judge, remanding the relator a verbal motion was made before Judge Speer, then engaged in holding the District Court (page 6), to allow an appeal, and an order

passed (page 6), that the said William S. Roberts be taken into the custody of the United States Marshall for the said Southern District of Georgia, to be by him safely kept, and that the said William S. Roberts do execute and deliver a good and sufficient bond, in the sum of ten thousand dollars, with security, to be approved by the Judge of said District Court, which said bond when approved, shall be filed with the Clerk of the said Circuit Court, and shall be conditioned as follows: That the said William S. Roberts do deliver himself up to the Marshall of said Southern District, and do appear before the Circuit Court, whenever and wherever ordered by this Court, or by the said Circuit Court, and do then and there abide by and perform the judgment of the Circuit Court in the premisses, and that the said William S. Roberts do cause to be sent to the said appellate tribunal, a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings and documents, and affidavits in said cause immediately on the execution of said bond, and that upon the execution and approval of said bond as aforesaid, and the tender of the same, the said William S. Roberts be discharged from the custody of said Marshall, and allowed to go free, subject to the terms of this order, or the final decision of said Appellate Court. The terms of the order were accepted by appellant, and on the 7th of May, 1885, Judge Speer approved the bond tendered (pages 27 and 28), which was filed payable to the United States Marshall, and conditioned as set forth in the order allowing the appeal. (Page 28.)

The April Term, 1885, of the Circuit Court, United States, Southern District of Georgia—Eastern Division, being then in session, with the District Judge alone presiding, and he having before him for review his own action as District Judge, on the 14th of May, 1885, ordered a transcript of the petition, writ of habeas corpus, return, and other proceedings, documents and affidavits, in the case to be heard on appeal before the Honorable William B. Woods, Justice of the Supreme Court, at Atlanta, Georgia, on Monday, May 18th, 1885, or as soon thereafter as the same could be heard. (Page 29.)

Notice of the passage of this order was served upon the appellant's attorneys (page 30), and the matter was heard before Justice Woods, who rendered his decision May 19th, 1885 (page 31), affirming the judgment of the District Judge, after which judgment the Circuit Court finally adjourned, May 21, 1885. (Page 41.)

Thereafter an appeal was allowed by Justice Woods, June 29th, 1885, to this Court, and a supersedeas granted by him, he directing "that the bail of the said Roberts retain him in their custody, *and produce him to answer whatever decision the Supreme Court may render in the cause.*"

BRIEF FOR APPELLEE.

ASSIGNMENTS OF ERROR.

I

1. The petition states the appeal to be from the decision of Judge Woods, sitting as Circuit Judge (page 33 top), and as provided for in sections 763-766 Revised Statutes United States, amended by Act March 3, 1885. Therefore only such an appeal has been allowed, and should be considered.

It is a question whether any legal appeal was before Justice Woods, inasmuch as it was an order passed in open Court without petition to the District Court, nor to the Judge, and it allowed the appeal from the decision of the Judge of that Court when sitting as Judge. (Page 6). It is submitted:

1. That the order required appearance, *whenever and wherever* ordered by the District Court, or by the said Circuit Court, that the Circuit Court ordered it heard at Atlanta, that notice was acknowledged of the passage of the order, May 15, 1885, and no exception was filed or noted that the rendition of the decision of Justice Woods, of May 19th, 1885, prior to the adjournment of the Circuit Court, May 21st, was an adoption of the same by the Court itself, if any such action was at all necessary.

The Petition for appeal (page 37) says, after reciting incidents up to the decision of Judge Speer May 4, 1885, states: "whereupon your petitioner appealed to the Circuit Court for the Southern District of Georgia, Eastern Division, *which court shortly thereafter* adjourned without any hearing being had upon said appeal if any hearing could have been had at that term which was in session when said appeal was allowed. *After the adjournment of said court* on motion of counsel for said Reilly and over objection of your petitioners, counsel said appeal was heard by Judge Wood's Associate Justice of the Supreme Court of the United States." This statement is error made like others in the petition, away from the record and without verification.

2. That the decision of Justice Woods was actually accepted and acted on by the appellant in this particular, viz: After the affirmance of the decision of the District Judge, leave was granted by Justice Wood's order to apply to the District Judge for stay of the order of remand of May 4th, 1885, and this was actually made before said District Judge, *at Atlanta*, June 19th, 1885 (page 35), when the relator was remanded into the custody of the Marshall, to be held pending his restoration to health. The appeal was applied for thereafter, June 20th, but not filed until July 1st, 1885 (page 34), the

order of the District Judge being in the interim, filed in the District Court, and Circuit Court, by the relator, now appellant, June 22d, 1885 (page 36), so that it may be gravely questioned whether such action before the application for the appeal has not estopped the appellant from its prosecution here.

3. The exceptions that no hearing could be had at the April Term, 1885, of the Circuit Court, but only at the November Term, 1885, and that Justice Woods sat at chambers to hear the appeal without consent, are not sustained by the record, for no notice appears of any such exception noted at the passage of the order in the Circuit Court of May 14th, 1885 (page 29), nor the hearing before Justice Woods, May 19th, 1885 (page 31), nor at the filing of Justice Wood's order in the Circuit Court, nor by entry thereof on its minutes before final adjournment.

The facts outside the record are that Judge Speer, on deciding to allow an appeal to the Circuit Court, stated he would, in the Circuit Court, affirm his own decision as District Judge, hence some other Judge must hear the appeal, and therefore passed the order, Justice Woods, at the hearing of the appeal, stated if any question was raised as to his right to hear the appeal at Atlanta, in Northern District of Georgia, he would adjourn it, and proceed to Savannah or Southern Dlstrict, and all objection on this point before the hearing proceeded was expressly withdrawn by Mr. Black, the counsel of record for appellant.

If the question of the right to hear the appeal at April term, 1885, then in session, is before this court, and the appellant was not bound by the terms of the order allowing the appeal nor required to confirm to the construction of Judge Speer, who passed it as requiring a hearing at that term, then it is submitted that such action was legally had in the following cases :

2. Woods 428, ex parte Dock Bridges, decision by Justice Bradley, appeal by the Attorney General of Georgia from a decision of the District Judge of U. S. to the Circuit Court then in session.

3. McArthurs 426, case George Taylor, where it is held an appeal would lie from the decision of justice to general term at instance of Attorney General.

Wales vs. Whitney, 114 U. S. R., 564, where relator was under charges before a court martial, and upon application to this court for the original writ of habeas corpus this court suggested that the appellate jurisdiction had been restored, and vpon appeal thereafter taken out by the accused to the term then in session heard and determined the case.

To hold that appeals in such cases are only to be returnable to the next term of the court when the Circuit Court was in session, nineteen days after its allowance is to set at naught the provision of the constitution, Article 2, Sec. 2, par., by denying any immediate delivery to the executive of the demanding State, and put it out of the power of the Judge in any case to speed the cause.

II

The second and fifth assignments of error, should be considered together, and are as follows:

2. Because there was no evidence showing that the relator had ever been in New York since the commission of the crime, or at the time of its commission, which was not fully rebutted.

5. Because the evidence submitted to the Governor of Georgia, showed that if any crime was committed, it was committed in Georgia, and not in New York.

The facts appearing from the certified copy of the papers filed in the Executive office of the State of Georgia, introduced by the appellant, are substantially as follows: See pages 7 to 17, that the District Attorney (page 12) certified in accordance with the requirements of the Executive department of the State of New York.

That in the affidavit of W. W. Thurston (page 8), he states, "That before being arrested, Roberts fled from the State of New York, and is now a fugitive from justice, at Augusta, in the State of Georgia."

The affidavit of W. P. St. John, President of the Mercantile National Bank of New York (page 15), says: "A loan had been made by said bank to the firm of J. P. Billups & Co., for the sum of fifteen thousand dollars, which loan was secured by the note of William S. Roberts, and also by thirty bonds of the Georgetown & Lanes Rail Road Company. On the 12th of February, 1884, said firm of Billups & Co., having failed, or being about to fail, William S Roberts came to the bank, which made an arrangement with him and Billups, by which said bank accepted his, Roberts, note for $16,908. 14, said note was to mature April 15th, 1884, and was secured by the aforesaid thirty bonds, and was also to be secured by an additional ten bonds which said Roberts promised he would send for to Georgia. He accordingly telegraphed Walton, Cashier, who forwarded them that day by express. On the said 14th of February, 1884, said Mercantile National Bank, received by express the said ten bonds of said Railroad Company, which are numbered from 9 to 18, both inclusive, and which are the same bonds produced by deponent before the Grand Jury, on which his testimony is founded. That on the 14th of April, 1884, the amount for which said note was given, was reduced to sixteen thousand dollars, by a payment received from said Roberts, and on May 17th, 1884, a new note was made and delivered by said Roberts, maturing June 16th, 1884; which has not been paid for sixteen thousand dollars.

That said Roberts corresponded with said Mercantile National Bank, from time to time subsequent to the maturity of said last note, begging said Bank not to sacrifice the collaterals deposited by him, and the best recollection of deponent is that said Roberts once called upon deponent at the said Mercantile Bank, but said Roberts has not been to said Bank, nor had any communication with said

Bank, since January 1, of the present year 1885. That said Mercantile National Bank also holds the said forty Bonds, being the thirty originally deposited under the instructions of said Roberts, February 12, 1884, as collateral security for the individual indebtedness of said Roberts, evidenced by his note to the Bank. That the Bank of Augusta has no connection with the said indebtedness, the transaction was with the said Roberts, entirely for his own individual benefit and account, so far as it was understood by the said Mercantile National Bank.

In the affidavit of W. W. Thurston, page 10, he says: "that William S. Roberts, as President of the Bank of Augusta, received April 21, 1883, for account of the Bethlehem Iron Company, eighty two Bonds of the Georgetown & Lands Railroad Company, numbered from 1 to 82, to be held subject to their order, that thereafter, other Bonds, aggregating with these one hundred and forty five thousand dollars, were deposited with said Bank, and receipts received from Edward H. Walton, that on the 28th January, 1885, in Augusta, Georgia, he made a demand on Roberts and Walton for the delivery of said special deposits." The said demand was refused, and said Roberts and Walton replied that they did not have possession of any of said Bonds, but that they were all in the City of New York, where Mr. Roberts had taken them. The said Roberts and Walton also stated, that the said Roberts had, on or about the month of December, 1883, and at other times thereafter, taken the said Bonds so belonging to this complainant to the City of New York, and had pledged forty thousand dollars, par value thereof, with the Mercantile National Bank, of the State of New York, as collateral security for the personal obligation of said Roberts, for the sum of sixteen thousand dollars." Further that deponent "called on the Mercantile National Bank, in the City of New York, and demanded possession—which was refused—and he was informed by the President, Mr. St. John, that the said Roberts had pledged forty thousand dollars of the aforesaid Bonds with the said Mercantile National Bank, and the said Bank held them as security for the individual indebtedness of the said Roberts to the amount of sixteen thousand dollars." The further affidavit of W. W. Thurston (page 13), states, in reciting the circumstances of the demand after the failure of the Bank of Augusta, Roberts and Walton both being present, "Mr. Miller tendering the receipts which he held in his hand, asked Mr. Walton to give possession of the Bonds, explaining the natural desire of the Bethlehem Iron Company to get possession of them." Mr. Walton replied that he could not at once give possession of the Bonds, as they were not in his possession, but could hand over forty thousand in two or three days. * * *

Further on Mr. Miller then asked what had become of the balance of the bonds which were the property of the Bethlehem Iron Company? To this Mr. Roberts replied that they were held by the Mercantile National Bank of the State of New York as collateral for

sixteen thousand dollars which, Mr. Walton stated, the Bank of Augusta had no interest in or benefit from. In answer to Mr. Miller, Mr. Walton stated that Mr. Roberts knew the bonds used by him as above were the property of the Bethlehem Iron Company, to which Mr. Roberts assented."

"The Bank of New York and the Mercantile National Bank both refused to deliver them up. On the 8th day of April instant, I first discovered the fact that ten of the bonds in question, numbers 9 to 18, had been sent to New York on the 12th of February, 1884, and were in the possession of the Mercantile National Bank."

The affidavit offered by the appellant of himself, page 18, says:

"He was in New York City February 12, 1884, having gone on principally to settle this business about the thirty bonds, which he found deposited in the Mercantile Bank on his arrival in New York. This business he concluded February 12, 1884. His note, which Billups had illegally deposited as collateral for his (Billup's) debt, was about to fall due February 14, 1884. It is probable, and deponent thinks true, that in closing the matter with the Bank he gave his note in renewal of the note given by Billups and dated February 14, 1884, so as to meet the note falling due on that day. But the whole transaction was completed, to deponent's best recollection, on February 12, 1884, and deponent calls nothing to mind that could detain him in New York for two days longer."

The affidavit of E. H. Walton, page 18, says:

"The said ten bonds referred to in the record were not sent to the Mercantile Bank of New York by the said Roberts, but sent by him pursuant to a telegram received from said Roberts; that said William S. Roberts did not know what particular bonds were sent, and said bonds were not sent through the said Roberts, but were sent directly to said Mercantile Bank by express. As the purpose for which said bonds were to be used were not known the ten bonds referred to were sent."

The appellee offered no evidence but the executive warrant of the Governor of Georgia, the power from the executive of New York to receive the accused and a transcript of the record from Richmond Superior Court, showing every question made before the United States Judge had been made before the State Judge, who, in his decision, page 23, says: "When asked to review the action of the Executive of this State, and ascertain whether or not he should not honor the requisition, in determing the question opened the door wide and let in all the evidence before the Governor and other evidence of the trial."

The Constitution, art. 3, sec. 2, par. 2, declares the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

In 6 Wallace, 318, ex parte McCardle, this court on page 327, say: "Every question of substance which the Circuit Court could

decide upon the return of the habeas corpus, including the question of its own jurisdiction, may be reviewed here on appeal from its final judgment."

It is insisted that the judgment of a court, upon the facts on a habeas corpus case is analagous to a verdict of a jury and will not be disturbed by the reviewing court if there be enough to support it, although there may be other testimony strongly in conflict with it. Such is the law of Georgia. Starr vs. Barton, 34 Ga. R., 99; but when the testimony which comes from the accused relates mainly to the question of intent in depositing the bonds specified in the indictment, and is set out in ex parte affidavits offered at the hearing, it is not such matter of substance as this Court will review.

In Taylor vs. Taintor, 16 Wallace R., 371, this court say, page 374, "It is true that the Constitutional provision and the law of Congress under which the arrest and delivery were made are obligatory upon every State and a part of the law of every State. But the duty enjoined is several and not joint, and every governor acts separately and independently for himself * * * * whatever the decision—if the proceedings were regular, it would have been conclusive. There could have been no review and no inquiry going behind it." "Every violation of the criminal laws of a State is within the meaning of the Constitution and may be made the foundation of a requisition," citing 24 Howard 66.

The question then is whether the proceedings found to be regular are to be overcome by the affidavit of the accused that he is not a fugitive

In ex-parte Ruggel, 114 U. S. R., 642, the court say, page 652, as to the sufficiency of the affidavit establishing the fact that the appellant was a fugitive from justice, "we cannot say that the Governor of Utah erred in regarding it as a statement of a fact and as sufficient evidence that appellant was a fugitive from the State, especially as no opposing evidence was brought to his attention. If the determination of that fact by the Governor of Utah, upon evidence introduced before him, is subject to a judicial review upon habeas corpus the accused in custody under his warrant should not be discharged merely because in the judgment of the court the evidence as to his being a fugitive from justice was not s full as might properly have been required, or because it was so meagre as perhaps to admit of a conclusion different from that reached by him."

Reliance was placed in the court below upon Wilcox vs. Nolz 34, Ohio State, 520, to show that persons must be actually and not constructively present in the demanding State when they violate its laws, and that parol evidence was admissible to show there had been no such actual presence of the accused in the State; but the same court say in ex parte Shelden 34, Ohio State, 319, that after the alleged fugitive has been arrested on an extradition warrant he will not be discharged on the ground that there was no evidence before the Executive who issued the warrant showing that the fugitive had fled from the demanding State to avoid prosecution.

In 32 New Jersey Law, 150, in the matter of Peter Voorhees, the Court say: "A person who commits a crime within a State, and withdraws himself from such jurisdiction without waiting to abide the consequences of such act, must be regarded as a fugitive from the justice of the State whose laws he has infringed. Any other construction would not only be inconsistent with good sense, in the context in which it stands, but would likewise destroy, for most practical purposes, the efficacy of the entire Constitutional provision."

In Draper vs Pinkerton, 17 Hun., 199, the Court say: "The charge that he committed the crime in that State, coupled with the fact that he is found in this State, is conclusive upon the question whether he is a fugitive from justice." And I think that the fact that he is found in another State is sufficient evidence that he has fled from the State where he committed the crime."

In 13 S. C., 80, ex parte Swearingen, the Court, discussing who is a fugitive, say: "Those terms were intended to embrace not only a case where a party after committing a crime actually *flees*, in the literal sense of that term, from the State where such crime was committed, but also a case where a citizen of one State who, within the territorial limits of another State, commits a crime, and then simply returns to his home."

III.

The third and fourth grounds of error should be considered together, and are as follows:

3. Because no copy of the laws of New York was submitted to the Governor of Georgia, showing what constituted grand larceny under the laws of New York.

4. Because no copy of the laws of New York was submitted to the Governor of Georgia, showing that by such laws, the indictment was sufficient, it manifestly appearing that said indictment did not charge any crime by the rules of the common law.

The copy indictment has endorsed on it, page 13, top, GRAND LARCENY. 1st Degree. Sections 528, 530, 540. Penal Code. A True Bill. Henry A. Oakly, Foreman.

United Siates Courts are bound to take judicial notice of the laws of a State without proof.

In 9 Peters, 607, Owens vs. Hull, the Court say on page 625, "we are of opinion that the Circuit Court was bound to take judicial notice of the laws of Louisiana."

In 16 Howard, 65, Pennington vs. Gibson, the Court say, page 81, "we hold that the Courts of the United States can and should take notice of the laws and judicial decisions of the several States of the Union, and that with respect to these, nothing is required to be specially averred in pleading, which would not be required by the tribunals of those States."

In 20 Howard, 227, C. D. & Co. vs. Shepard and others, a suit

by a corporation, on page 234, the Court say, "the existence and domicil of the corporate body is judicially known to the Court."

In 114 United States Reports, 218, Lamar, executor, vs. Micou, administrator, the Court, on page 223 say, "the law of any State of the Union, is dependent upon statute or judicial opinions, and is a matter which the Courts of the United States are bound to take notice, without plea or proof."

The copy indictment therefore to be found in the record, charging a violation of the law of New York, by the commission of the offence of grand larceny, requires no proof outside of the judicial knowledge of this Court, of the laws of the State of New York making such an offence penal.

Examination of these laws show that section 530, of the Penal Code of the State of New York, declares a person guilty of grand larceny in the first degree; who steals or unlawfully obtains or appropriates, in any manner, specified in this chapter, property of the value of more than $25.00. That section 540 of the same Code, declares as larceny, the bringing into the State of New York, the property of another, stolen without the State, punishment to be the same as if such larceny or receiving, had been within the State.

Under these sections the indictments was found, April 10, 1885.

In 3 Zabriskie, 311, in matter of Fetter page 320, the court say, admitting the position taken by counsel, that the offence specified does not constitute larceny at the common law, it is, nevertheless, certified by the Governor of California to be grand larceny under the laws of that State. It is moreover an offence of a highly immoral character as appears by the bill of indictment, which must be regarded as "prima facie" evidence of the fact, is a crime by the law of the State of California

In exparte Reggel, 114 U. S. R., 642, this court affirmed, 24 Howard, 66, that the words treason, felony or other crime in Section 2 of Article 1 of the constitution must receive the same interpretation, whether the demand for the fugitive is made under that act upon the Governor of a Territory as when made upon the executive authority of one of the States of the Union, and in the same case as to objections made to the indictment, say, "it is sufficient for the purposes of the present case to say that by the laws of Pennsylvania every indictment is to be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the act of the assembly prohibiting its commission and prescribing the punishment therefor, or if at common law so plainly that the entire offence charged may be easily understood by the jury

In 56 N. Y., 187, Lawrence vs. Brady, the Court say, after reciting the clause of the Consitution relative to fugitives from justice: "It is plain, from the language of this clause of the Constitution, that the obligation of a State to deliver a fugitive from justice, on demand of the State from which he fled, arises when the fugitive is

State court and a court of the United States may each take jurisdiction, the tribunal which first gets it holds it to the exclusion of the other until its duty is fully performed and the jurisdiction invoked is exhausted and this rule applies alike in both civil and criminal cases."

In 100 U. S., 13, exparte Read, the court say, page 23, as to imprisonment under order of a military court, "to warrant the discharge of the petitioner the sentence under which he is held must be not merely erroneous and voidable, but absolutely void." This is affirmed in ex parte Mason, 105 U. S., 696, where on page 697, after expressing a difference of opinion as to jurisdiction, to issue the writ, the court say, "we all agree, however, there could be no discharge under it if the court martial had jurisdiction to try the offender for the offence with which he is charged and the sentence was one which the court could under the law pronounce."

In Robb vs : Connelly III United States 624 October term 1883, this Court say, "It is clear that the question now presented has never been determined by this Court." and decide. "That so far as the Constitution and Laws of the United States are concerned, it is competent for the Courts of the State of California or for any of Her Judges, having power under Her Law to issue writs of habeas corpus to determine whether the warrant of arrest, and the delivery of the fugitive to the State of Oregon were in conformity with the Statute of the United States : if so to remand him to the custody of the Agent of Oregon."

In ex parte Crouch 112 U. S. R. 178, this Court had before it the question of leave to file a petition for writ of habeas corpus, the petitioner being held in custody by Order of the Husting's Court of the city of Richmond, and for violation of a State Law, providing that no person shall do business without a license. On page 180, the Court say, "it is elementary learning that if a prisoner is in the custody of a State Court of competent jurisdiction not illegally asserted he cannot be taken from that jurisdiction and discharged on habeas corpus issued by a Court of the United States, simply because he is not guilty of the offence for which he is held."

"The office of the writ of habeas corpus is not to correct such errors, nor to take the prisoner away from the Court which holds him for trial for fear if he remains they may be committed."

In ex parte Royall 112 U. S. R. 181, which was a habeas corpus case where the relator had been indicted in a State Court, this Court on page 182, in passing upon the jurisdiction of the Court prior to the re-establishment of appeals, where the judgment of the Circuit Court remanding the petitioner was stayed upon his stating that he intended to apply to the Supreme Court to review the order made by the Circuit Court, and thereupon the petitioner was admitted to bail say, "as the Circuit Court has not yet remanded the prisoner to the custody from which he was taken, he is in no condition to apply for one under the ruling in Yergers case."

2. As to the faith and credit to which Judge Roney's decision was entitled.

In Georgia, a decision on habeas corpus is subject to review by the Supreme Court alone, 24 Ga., 379, Livingston vs. Livingston; and 62 Ga., 598, Perry vs. McLendon; and the judgment is a bar to a second writ, as to all matters which could then be placed in issue. 62 Ga., 603; same case.

In Georgia, no supersedeas is allowed in habeas corpus cases, Irwin vs. Jackson, 34 Ga., 101, and if a bond is taken pending a review of a decision remanding the relator, no recovery can be had thereon. McLendon vs. Smith, 68 Ga., 38.

The decision unexcepted to in thirty days, in Georgia, is final.

As a rule of law it was binding on the United States Court, Burgess vs. Seligman, 107 U. S. R., 33; and if it has not so become, the United States Court will lean towards an agreement of views if the question is balanced with doubt, 107 U. S. R., 34, same case, and as a judgment of a Court of Record, it was binding until reversed, ex parte Tobias Watkins, 3 Peters, 193-207.

In ex par e Kaine, 3 Blatchford, 1; A case arising under extradition treaty with Great Britain, the Court held that the decision of a Circuit Judge dismissing a writ and remanding the prisoner was no bar to an inquiry, by a Justice of the Supreme Court of the United States, upon a habeas corpus issued by him into the legality of the detention of the prisoner.

This case was before the Supreme Court of the United States, 14 Howard 103; when an application to that Court for an original writ of habeas corpus was denied and the petition dismissed.

This decision of Judge Nelson was rendered after the refusal of the Supreme Court of the United States to take jurisdiction, and states, on page 5, that the proceedings upon this writ in the Federal Courts are not governed by the laws of the States on the subject, but by the common law of England at the adoption of the Constitution, subject to such alterations as Congress may see fit to prescribe. Subsequently, in ex parte Robinson, 6 McLean, 355, this case was reviewed, and, on page 564, the Court say: "Every one who examines the authority in this country and in England will find that there have been diversity of judgments on the point whether the decision on a habeas corpus is final. * * * I have been myself inclined to think such a decision should be considered final where there was clearly jurisdiction and a full and fair hearing, but that it might not be so considered when any of these requisites were wanting, or when new and important evidence could be obtained."

In this case the Commissioner's warrant had been issued for the arrest of a fugitive slave, and, pending the hearing while the fugitive was in the possession of the Marshal, a writ of habeas corpus was taken out before a State Judge, who discharged the fugitive. On page 361 the learned Judge says, as to this action, it must be recollected that when the habeas corpus was served upon the Marshal the case before the Commissioner was in progress and near its

termination. Is there any precedent for such a procedure. If the State Court had a concurrent power the proceeding would have been irregular and void. Under the same government I could not have interposed, but that the Court of a different government could interpose in this form is sanctioned by no law or precedent.

It is, therefore, insisted in this case that the appellant, having had his day in Court, having failed to except to a judgment which has become final, cannot defeat the same or avoid its effect by resort to the Federal Courts.

VI.

The importance of this case and the peculiar circumstances existing have been made to appear upon the motion to advance the hearing thereof and it now remains with this court to dispose of the appellant as law and justice require. U. S. Code 661, submitting that a bank President who takes $40,000 of a special deposit in his bank and pledges it as collateral for his own individual note in the city of New York, ~~he~~ should held accountable before the courts of that State where the hypothecation was made and the conversion took place. this court is asked to dismiss the appeal or affirm the judgment below, directing in that event the mandate of the court to issue for immediate enforcement of its judgment.

Respectfully Submitted,

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Attorneys for Appellee.

116-80

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 992.

WILLIAM S. ROBERTS *vs.* PHILIP REILLY.

Habeas Corpus.

On appeal from the Circuit Court of the United States for the Southern District of Georgia, Eastern Division.

And now comes the appellee upon the hearing of the case and moves the Court—

I. To dismiss the appeal for want of jurisdiction in the court below. Because the record shows that at the date of the issuing of the writ of *habeas corpus* by the district judge of the United States for the southern district of Georgia the appellant, on his own motion, was then held in custody on a writ of *habeas corpus* issued from a court of co-ordinate jurisdiction at the instance of the appellant against the appellee, which writ was pending and undetermined at the time when the appellee was served with the writ of *habeas corpus* from the said district judge of the United States.

RANDOLPH B. MARTINE,
District Attorney.
DANIEL LORD, JR.,
WM. E. DOSTER,
FRANK H. MILLER,
Attorneys for Appellee.

Statement.

On his own motion, made the 30th of April, 1885, Roberts petitioned the Hon. Emory Speer, judge of the United States court for the writ of *habeas corpus*, on the same day by the issue of the writ he was placed in the custody and control of the district court. The record shows a return that from April 27th until May 1, 1885, Roberts was held subject to the order of the judge of the superior courts of Augusta circuit; on May 2d it was ordered that Roberts be held in the custody of the marshal, pending the hearing under the writ of *habeas corpus*. On the 5th of May he appealed to the circuit court under the act of February 5, 1867, which expressly provides that such appeals shall be taken in such terms and under such regulations and orders as well for the custody and appearance, etc., as for sending up transcript, etc.

Bond was allowed conditioned that Roberts do deliver himself whenever and wherever ordered by the court.

He was allowed to change the custody of the marshal for that of his sureties subject to the terms of this order or the final decision of said appellate court.

The hearing of the appeal was on the 19th of May; the writ was disallowed, and Roberts was remanded to the custody of Philip Reilly, and a copy of this last order was to be sent to the district judge for the enforcement of his judgment of May 4.

Roberts' absence upon the hearing of the appeal was in the same order excused, provided the said bond remain in full force until complied with by the delivery of the relator to the United States marshal to be turned over to said Philip Reilly or such other duly constituted agent appointed by the Governor of New York. This delivery, under same conditions, was staid till June 19, when application was made to the district judge for further stay, and granted; the relator being ordered into the custody of the marshal (page 35) until restored to health.

Argument.

I.

When want of jurisdiction is patent or can be readily ascertained by an examination of the record, * * the court will entertain and act upon a motion to dismiss for want of jurisdiction. (Semple *vs.* Hagar, 4 Wallace, 431.) And if it is apparent from the record that the court has not acquired jurisdiction for want of proper appeal, it will be dismissed, although neither party ask it. (Edmonson *vs.* Bloomshire, 7 Wallace, 306; 4 Otto, 463.)

The court can notice a material and incurable defect in the pleadings as represented in the record, although not suggested by the counsel on argument (Garland *vs.* Davis, 4 Howard, 131), and will affirm a judgment, however erroneous the instructions may be, if the case of the plaintiff is inherently and fatally defective. (Barth *vs.* Clise, sheriff, 12 Wallace, 400.)

In Robb *vs.* Connelly, 111 U. S. R., this court, for the first time, decides as to the power of a State court to issue a writ of *habeas corpus* to determine whether the warrant of arrest and the delivery were in conformity to the statute of the United States. Previously to that time it was held that when concurrent jurisdiction may be exercised by Federal and State authorities the court which first takes jurisdiction can be interfered with by no other court, State or Federal, etc. (*Ex parte* Robinson, VI McLean, 355 *et seq.*; *ex parte* Dorr, 3 How., 451, 103.)

The leading case is Freeman *vs.* Howe, 24 How., 451. In this and the authorities there cited the principle is established that persons and property in the custody of the law of a State are withdrawn from the process of the United States, and in like manner persons and property in the custody of the law of the United States court are not subject to any State process.

See also Taylor *vs.* Carryl, 20 How., 584; 12 Curtiss C. C., 414 and 469; Levi *vs.* Columbia Life Ins. Co., 1 Fed. R., 209; 8 Fed. R.,

220; 7 Fed. R., 435; 6 Fed. R., 443; Poate *vs.* Phipps, 14 How., 374; Field and Miller, Fed. Prac., 272, on Conflict of Jurisdiction and Authorities; pages 13 and 14 of brief for appellee on the merits.

In 12 Wallace, 406, Barth *vs.* Clise, sheriff, being a suit for an escape pending the hearing of a writ of *habeas corpus*, this court say the safe-keeping of the prisoner, when he is produced under the writ, is entirely under the control and direction of the court to which the return is made.

It therefore follows that the State court held possession of Roberts, and the second writ of *habeas corpus*, upon this fact being disclosed, was properly dismissed, the United States court having no further jurisdiction.

Respectfully submitted.

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